

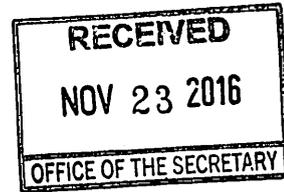
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17253

In the Matter of

JAMES A. WINKELMANN, SR.,  
and BLUE OCEAN PORTFOLIOS,  
LLC,

Respondents.



THE DIVISION OF ENFORCEMENT'S STATEMENT OF FACTS

Benjamin J. Hanauer  
David F. Benson  
U.S. Securities and Exchange Commission  
175 West Jackson Blvd, Suite 900  
Chicago, IL 60604  
Phone: 312-353-8642  
Fax: 312-353-7398

*Counsel for the Division of Enforcement*

## STATEMENT OF FACTS<sup>1</sup>

### I. Facts from Winkelmann's Testimony

#### Winkelmann's Understanding of His Fiduciary Duties

1. During the period at issue in these proceedings, Winkelmann recognized that he owed fiduciary duties – including the duties of honesty, good faith, loyalty, disclosure of all material facts, and disclosure of conflicts of interest – but testified at trial that he only owed those duties to his clients' advisory accounts, as opposed to the clients themselves.

373:18 Q And these things I just asked you about,  
373:19 you understand them now, but you also understood  
373:20 them back in 2011, correct?

373:21 A Yes.

373:22 Q And back in 2011, you understood that as  
373:23 an investment advisor, you owed fiduciary  
373:24 obligations to your advisory clients?

373:25 A Yes, to our accounts, that's true.

374:1 Q I'm sorry?

374:2 A To our accounts.

374:3 Q Your investment advisory accounts?

374:4 A Accounts, yeah.

374:5 Q And you understood that you had to be  
374:6 honest with your advisory clients?

374:7 A Yes.

374:8 Q And you understood that you have an  
374:9 affirmative duty of utmost good faith to act solely  
374:10 in the best interest of your clients?

374:11 A Of our advisory account clients, that's  
374:12 true.

374:13 Q And it's not only that you understood that  
374:14 you had those obligations; you required that your  
374:15 employees understand and abide by those obligations?

374:16 A Of course.

374:17 Q And, in fact, you required employees of  
374:18 Blue Ocean Portfolios to strictly comply with the  
374:19 fiduciary duties owed to advisory clients?

374:20 A The accounts of the advisory clients, of  
374:21 course.

374:22 Q Wait. I want to make sure we aren't  
374:23 getting messed up here. So you are saying you only

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<sup>1</sup> A timeline of significant events is attached at the conclusion of this Statement of Facts.

374:24 owed fiduciary duties in regards to the client's  
374:25 money that was managed by Blue Ocean Portfolios and  
375:1 not to the clients themselves?  
375:2 A That's the way we operated our business.  
376:13 And back in 2011, you understood that you  
376:14 owed your clients a duty of loyalty?  
376:15 A Yes.  
376:16 Q And you understood you owed your clients a  
376:17 duty to make full and fair disclosure of all  
376:18 material facts?  
376:19 A Yes.  
376:20 Q And you understood you were [required] to  
376:21 disclose to your clients all information as to any  
376:22 potential or actual conflicts of interest?  
376:23 A Yes.  
1505:25 Q Right. So yes or no in connection with  
1506:1 the royalty unit relationship, did you owe them  
1506:2 fiduciary duties?  
1506:3 A No, because the terms were spelled out.

2. Winkelmann recognized that conflicts of interest can have a negative impact on investor returns. (Ex. 423)

380:16 Q And then a little bit below it, it says on  
380:17 March 13, 2012, Jim Winkelmann wrote, This is only a  
380:18 draft that I put together. Please feel free to  
380:19 embellish and/or edit. Let me know soon.  
380:20 And then down in the first full paragraph,  
380:21 second line or third sentence from the bottom, you  
380:22 write, Mr. Swift has firsthand knowledge of the  
380:23 negative impact that conflicts of interest can have  
380:24 on returns?  
380:25 A Yeah. This refreshes my memory from a  
381:1 conversation I would have had with Mr. Swift.  
381:2 Q All right. So you wrote that?  
381:3 A Well, that's my suggestions to him to  
381:4 review, yes.  
381:5 Q Okay. And your suggestions ended up being  
381:6 in the offering memo that investors received,  
381:7 correct? At least on that piece about conflicts of  
381:8 interest having negative impacts?  
381:9 A Well, I think it was in round three it  
381:10 showed up.

3. BOP's Code of Ethics and Policies and Procedures Manuals do *not* state that BOP or its personnel owe fiduciary duties to the client accounts, as opposed to the clients themselves.

(See, e.g., Exs. 3 and 4).

4. BOP's Code of Ethics contained the following policy:

"Pursuant to Section 206 of the Advisers Act, both Blue Ocean Portfolios, LLC and its employees are prohibited from engaging in fraudulent, deceptive or manipulative conduct. Compliance with this section involves more than acting with honesty and good faith alone. It means that the Blue Ocean Portfolios, LLC has an affirmative duty of utmost good faith to act solely in the best interest of its clients." (Ex. 3, BO 10065).

5. BOP's Policies and Procedures Manual contained the following policy:

"As a registered adviser and as a fiduciary to our advisory clients, our firm has a duty of loyalty and to *always* act in utmost good faith, place our clients' interests first and foremost and to make full and fair disclosure of all material facts and in particular, information as to any potential and/or actual conflicts of interests." (Ex. 4, BO 10166) (emphasis added).

6. BOP's Policies and Procedures Manual contained the following policy:

"Every fiduciary has the duty and a responsibility to act in the utmost good faith and in the best interests of the client and to *always* place the client's interests first and foremost. As part of this duty, a fiduciary and an adviser with such duties, must eliminate conflicts of interest, whether actual or potential, or make full and fair disclosure of all material facts of any conflicts so a client, or prospective client, may make an informed decision in each particular circumstance." (Ex. 4, BO 10188) (emphasis added).

7. BOP's Policies and Procedures Manual contained the following policy:

As an adviser and a fiduciary to our clients, our clients' interests must *always* be placed first and foremost, and our trading practices and procedures prohibit unfair trading practices and seek to disclose and avoid any actual or potential conflicts of interests or resolve such conflicts in the client's favor. (Ex. 4, BO 10207) (emphasis added).

8. BOP's Policies and Procedures Manual contained the following policy:

As a fiduciary, our firm must *always* place our client's interests first and foremost and this includes pricing processes, which ensure fair, accurate and current

valuations of client securities of whatever nature. (Ex. 4, BO 10209) (emphasis added).

9. In September 2011, after being awarded the "Registered Fiduciary" certification, Winkelmann gave the following quote for a press release: "Unlike the vast majority of wealth management companies that hold themselves to a suitability standard we, at Blue Ocean Portfolios, *at all times* put our clients' interest first." (Ex. 67, p. 2) (emphasis added).

10. In September 2014, Winkelmann posted on BOP's website that he had been awarded the "Registered Fiduciary" certification and that as part of that certification, Winkelmann is "committed to *always* acting in the best interest of clients, using the skills, ethics and focus on the client needs that the Certification represents." (Ex. 310, p. 2) (emphasis added).

11. As of the last week of the hearing, BOP's website contained the following representation:

"Fiduciary is a legal term that defines a duty to others. By definition and practice, a fiduciary must place their clients' interests first. A fiduciary duty is never fully satisfied, they must always seek ways to do what is best for the clients... as a fiduciary Blue Ocean Portfolios must, at all times, put the clients' interests first.

1523:12 Q And let's just look at that so there's  
1523:13 no dispute about it, Exhibit 490. This is Blue  
1523:14 Ocean Portfolios' website, and if you go all the  
1523:15 way down to the bottom I can represent -- keep  
1523:16 going. There we go. Just the bottom tag line with  
1523:17 the WWW.

1523:18 A Did you like our page too on Facebook?

1523:19 Q I printed your page --

1523:20 A Okay.

1523:21 Q -- on October 10th, 2016. Do you see

1523:22 that?

1523:23 A Okay.

1523:24 Q I printed that page on October 11th,

1523:25 2016.

1524:1 A Okay.

1524:2 Q And let's see, can you go down to the

1524:3 bottom of page two, the bottom paragraph what is a

1524:4 fiduciary?

1524:5 A Okay.  
1524:6 Q And so as of today you're telling the  
1524:7 world, "Fiduciary is a legal term that defines a  
1524:8 duty to others. By definition and practice,  
1524:9 fiduciary must place their clients' interests  
1524:10 first. A fiduciary duty is never fully satisfied.  
1524:11 They must always seek ways to do what's best for  
1524:12 clients."  
1524:13 A Correct.  
1524:14 Q And then you continue, "Working with a  
1524:15 fiduciary does not mean that clients will make any  
1524:16 money. It simply means that as a fiduciary Blue  
1524:17 Ocean Portfolios must, at all times, put the  
1524:18 clients' interests first."  
1524:19 A Correct.  
1524:20 Q And so even to this day you're  
1524:21 representing to clients and prospective clients  
1524:22 that you always put their interests first and you  
1524:23 always do what's best for them, right?  
1524:24 A Yes.  
1524:25 Q And so even today if a royalty unit  
1525:1 holder who is also your client, there are eighteen  
1525:2 of them, went onto the website and read what you  
1525:3 had to say about fiduciary duties, they would have  
1525:4 no way of knowing that you don't think your  
1525:5 fiduciary duties stop when you're telling them  
1525:6 about royalty units, correct?  
1525:7 A Yes, but they would want that message  
1525:8 out there because that message helps their return.  
1525:9 That's the irony, Counselor.

12. BOP gave its advisory clients a "Plain Language Compensation & Conflicts of Interest Disclosure" form. (Ex. 228). In a section titled "Fiduciary Role," that form states that BOP "*always acts in a fiduciary role for the client* and only offers options and recommendations in the clients' best interest. This would include all products (mutual funds, stocks, variable annuities, etc) plus advisory services." (Ex. 228, p. 1) (emphasis in original).

391:16 Q Exhibit 228, please, and this is the plain  
391:17 language compensation and conflicts of interest  
391:18 disclosure?  
391:19 A Yes.  
391:20 Q And this is a standard disclosure that

391:21 Blue Ocean Portfolios provided to its advisory  
391:22 clients?  
391:23 A Yes.

13. Winkelmann would frequently remind his advisory clients of the fiduciary obligations that he owed them.

396:13 And in terms of the fiduciary duties you  
396:14 owed to your clients, you would frequently remind  
396:15 your advisory clients of the fiduciary obligations  
396:16 that you owed them?  
396:17 A Yeah, of course.

14. On January 16, 2012, Winkelmann wrote an email to his client Arthur Buckowitz, which stated:

“Unlike the majority of wealth advisors, we assume a fiduciary role for our clients. This means that Blue Ocean Portfolios must *always* put your interest first . . . This does not mean that we are satisfied; a fiduciary's duty can *never* be satisfied. We are *always* looking for ways to improve your odds.” (Ex. 90, p. 2) (emphasis added).

15. Winkelmann sent identical emails to his other advisory clients.

397:23 Q In Exhibit 90, you don't tell Mr.  
397:24 Buckowitz that you always put his interests first  
397:25 except when you are selling him royalty unit; you  
398:1 don't tell him that, do you?  
398:2 A Can you go back, can I see the cover?  
398:3 Q Absolutely. If you go to the first page  
398:4 of the exhibit, please, Byron.  
398:5 A This is what I want to clarify. This is  
398:6 what would be a methods to every one of our clients  
398:7 besides all of our advisory clients would get this.  
398:8 Q Okay. And that includes our advisory  
398:9 clients who you sold royalty units to?  
398:10 A If they had an investment advisory account  
398:11 with us, they received this letter.

16. On April 11, 2012, Winkelmann wrote an email to Buckowitz, which stated:

Blue Ocean Portfolios was designed to be a true fiduciary for our clients. Our legal duty is to *always* put the interest of our client first. Since we do not sell or underwrite securities, we can provide unbiased advice that is not corrupted by the

compensation that varies from one security to another...The result is that our clients have better odds of achieving a favorable outcome. (Ex. 127, p. 2) (emphasis added).

17. Winkelmann sent identical emails to BOP's other advisory clients.

398:12 Q Can you go to Exhibit 127, please. And

398:13 this is another e-mail that you wrote to Mr.

398:14 Buckowitz.

398:15 A Yes.

398:24 Q And again, this is right around the time

398:25 he bought royalty unit?

399:1 A And this went out to every investment

399:2 advisory client.

399:3 Q Okay. But right around the time Mr.

399:4 Buckowitz is buying the royalty unit, you are

399:5 telling him it's your legal duty to always put the

399:6 interest of him first, but you don't tell him your

399:7 duty stops when he's buying the royalty unit, right?

399:8 A Again, this letter went to all the

399:9 investment advisory clients.

18. On January 18, 2013, Winkelmann wrote a letter to Buckowitz, which stated:

Blue Ocean Portfolios provides fiduciary investment management services for your account(s) at Scottrade. *We do not sell securities* and our services are limited to providing allocation advice and management for your account(s). As a fiduciary, we are legally compelled to put your interest first *at all times*. (Ex. 462, p. 1) (emphasis added)

19. On May 13, 2013, Winkelmann wrote an email to Buckowitz, which stated: "As your fiduciary, we are compelled to seek out the optimal investment allocation and vehicles for our clients." (Ex. 463, p. 1) Winkelmann sent identical letters to BOP's other advisory clients.

402:20 (Division Exhibit No. 463 was

402:21 received in evidence.)

402:22 BY MR. HANAUER:

402:23 Q And the first sentence you write to Mr.

402:24 Buckowitz, As your fiduciary we are compelled to

402:25 seek out the optimal investment allocation and

403:1 vehicles for our clients?

403:2 A And again, this went to every Blue Ocean

403:3 client.

403:4 Q Including the clients who bought the

403:5 royalty units, right?  
403:6 A Well, we're going to disagree. They  
403:7 subscribed to the royalty units.

### **Events Leading to the Formation of BOP**

20. Winkelmann had ultimate decision-making authority at BOP. According to Winkelmann, "the buck stopped" with him.

437:11 Q As chief executive officer or manager or  
437:12 however you want to describe it, it was your  
437:13 responsibility to make the ultimate decisions for  
437:14 Blue Ocean Portfolios?

437:15 A After talking to my team, after talking to  
437:16 outside counsel, after talking to outside  
437:17 accountants, of course.

437:18 Q Ultimately, you are the decision maker?

437:19 A Correct.

437:20 Q In other words, the buck stopped with you?

437:21 A Yes.

21. Winkelmann "constantly" monitored BOP's revenues and expenses.

438:18 Q For that reason, your standard practice  
438:19 was to review Blue Ocean Portfolios's financial  
438:20 statements on at least a monthly basis?

438:21 A Our procedures published the close of  
438:22 books on the 20th of the month, following the month.  
438:23 Let's see. October's business would be closed on  
438:24 November 20th.

438:25 Q Okay. At some time, after November 20th,  
439:1 you're reviewing the October books?

439:2 A Yes, I'm looking at them, yes.

439:3 Q Okay. And the financial state --

439:4 materials, the Blue Ocean Portfolios financial  
439:5 materials that you reviewed on a monthly basis  
439:6 included balance sheets?

439:7 A Yes.

439:8 Q Income statements?

439:9 A Yes.

439:10 Q And statements of cash flow?

439:11 A Yes.

439:12 Q And among the financial metrics that you  
439:13 regularly reviewed, you constantly monitored Blue  
439:14 Ocean Portfolios's revenues and expenses?

439:15 A Yes.

22. Later in 2010, Winkelmann learned that Binkholder was being investigated by Missouri securities regulators. (Order on Stipulations, Nov. 15, 2016, Finding of Fact No. 41). When Winkelmann learned this, he told Binkholder that until the investigation ends, Binkholder needed to rescind his membership in BOP, no longer talk to clients, and no longer “have anything to do with” BOP. (*Id.*)

23. Despite this admonishment, Winkelmann allowed Binkholder to stay involved with BOP. Winkelmann and Binkholder continued to share office space and employees, and Binkholder remained as an owner and advisory representative of BOP until March 2011.

415:25 Q Okay. But you did actually allow Mr.  
416:1 Binkholder to be involved in Blue Ocean Portfolios?  
416:2 A Of course, for the benefit of the company.  
416:3 Q Okay. So you shared office space with  
416:4 him?  
416:5 A What time frame?  
416:6 Q 2010- 2011?  
416:7 A Yes.  
416:8 Q And you shared some employees with him?  
416:9 A Yes.  
416:10 Q Ms. Meystadt, she was both an employee of  
416:11 Blue Ocean Portfolios and she did work for Mr.  
416:12 Binkholder?  
416:13 A Yes.  
416:14 Q And you kept Mr. Binkholder on as an owner  
416:15 and adviser representative of Blue Ocean Portfolios  
416:16 until March of 2011?  
416:17 A You know, Counsel, I don't remember the  
416:18 specific date. Do you have a document I could  
416:19 refresh?  
416:20 Q I believe I do. Byron, can we look at  
416:21 Exhibit RX 4. That's the offering memorandum.  
416:22 A Okay.  
416:23 Q Page 16. And it's going to be in the  
416:24 legal and regulatory disclosure section. And the  
416:25 second paragraph it write -- you disclose to  
417:1 investors, Mr. Binkholder was a member of Blue Ocean  
417:2 Portfolios LLC and an advisory representative of the  
417:3 firm from September 2009 to March 2011?

417:4 A Yes.  
417:5 Q And that was -- that representation is  
417:6 accurate, correct?  
417:7 A Judge, may I elaborate just one point?  
417:8 JUDGE PATIL: First, answer the question.  
417:9 Is that representation accurate? And if you need to  
417:10 clarify to make it accurate, please do so.  
417:11 A That's accurate.

24. On February 1, 2011, BOP and Binkholder entered into a "Solicitor's Agreement." (Ex. 456). Per that agreement, Binkholder was required to use his "best efforts" to solicit and refer clients to BOP. (Ex. 456, §1). The agreement provided that Binkholder's "primary role" was to "introduce and assist each Solicited Client in establishing a relationship with [BOP] which will include introducing prospective clients and providing information about [BOP]." (Ex. 456, § 2). The agreement additionally noted that under a separate marketing and sponsorship agreement, Binkholder is "compensated for being a paid spokesman of" BOP. (Ex. 456, § 3).

25. On March 23, 2011, BOP and Binkholder entered into an "Exclusive Marketing & Sponsorship Agreement." (Ex. 5). Per that agreement, BOP agreed to sponsor the production of, and reimburse Binkholder's expenses relating to, Binkholder's websites, social media sites, radio shows, television shows, and book publications. (Ex. 5, § 1.01). BOP agreed to pay Binkholder monthly compensation at least equal to the compensation Winkelmann received from BOP. (Ex. 5, § 1.02). BOP also agreed to purchase at least \$2 million in life insurance on Binkholder's life, and allow Binkholder to choose a beneficiary for 50% of the policy's value. (Ex. 5, § 1.04(b)(ii))

26. The "Exclusive Marketing & Sponsorship Agreement" obliged Binkholder to: (a) "prominently and exclusively display and promote Blue Ocean services on all its web based, radio and television shows, productions and social media sites"; and (b) "exclusively enable Blue

Ocean to generate leads from [Binkholder's] websites, social media sites, radio shows, television shows, speaking engagements and book publications." (Ex. 5, § 1.03).

27. Binkholder's radio show generated 70 to 100 leads per week for BOP.

425:25 Q And Mr. Binkholder's show generated 70 to  
426:1 100 potential leads per week for Blue Ocean  
426:2 Portfolios?

426:3 A I remember it generated a lot. Do you  
426:4 have a document that -- I don't know the specific  
426:5 number. I can't remember the specific number.

426:6 Q If I told you you testified to that, would  
426:7 you have any reason to disagree with the 70 to 100  
426:8 figure?

426:9 A I would rather check our marketing  
426:10 material to give the Court an accurate recollection  
426:11 of how many leads came in.

426:12 Q Okay. Well, we don't -- in case we don't  
426:13 get a chance do that, Byron, can you please pull up  
426:14 Mr. Winkelmann's testimony, page 116, line 3 through  
426:15 12.

426:16 Mr. Watkins he was your lawyer at the time  
426:17 you were testifying?

426:18 A Yes. Mr. Watkins was my attorney at the  
426:19 time.

426:20 Q He's a lawyer here in St. Louis?

426:21 A Yes.

426:22 Q And he asks you -- basically start all  
426:23 over so you get the date right and you answer; Yeah  
426:24 the key role that Bryan Binholder played all the  
426:25 time from 2009 from the inception of Blue Ocean, all  
427:1 the way until he was basically run out of the office  
427:2 when we learned about his federal investigation, he  
427:3 hosted a radio show that we sponsored. He generated  
427:4 70 to 100 leads a week from The Financial Coach  
427:5 show. Blue Ocean Portfolios sponsored that.

427:6 Am I accurately reading your testimony?

427:7 A That's what the testimony says.

427:8 Q Am I accurately reading it?

427:9 A Yes.

28. In addition to his securities businesses, Winkelmann was the manager of his son's parody clothing company. In 2010, that company, along with Winkelmann and his son, was sued by The North Face Company for trademark infringement. (Ex. 205).

1440:7 Q And there was a holding company called  
1440:8 like Why Climb Mountains, or something like that?

1440:9 A Correct.

1440:10 Q You had an ownership interest in that?

1440:11 A No.

1440:12 Q No. You were some -- you were some way  
1440:13 involved in it, right?

1440:14 A I was the manager of my son's parody  
1440:15 clothing company.

29. As part of that lawsuit, the court issued a consent injunction binding Winkelmann. (Ex. 205, p. 1 ("This Court's Consent Injunction (Doc. 71) was a specific and definite order [and] bound James A. Winkelmann, Sr.")). On October 18, 2012, the court issued an order finding that Winkelmann was in contempt for violating that injunction. (Ex. 205, pp. 1 and 2) ("Respondents have violated this Court's Consent Injunction...James A. Winkelmann, Sr. [is] in contempt of this Court's Consent Injunction").

### **The Genesis of the Royalty Unit Offerings**

30. In early 2011, Winkelmann came up with the idea for BOP to offer royalty units.

439:16 Q So that gets us here to what brought us  
439:17 here, the royalty units. In early 2011, you came up  
439:18 with the idea of offering Blue Ocean Portfolios  
439:19 royalty units?

439:20 A Mike Morgan at Greensfelder and I came up  
439:21 with the idea.

439:22 Q But it was your idea?

439:23 A I had a lot of conversations with Mr.  
439:24 Morgan.

439:25 Q It was your idea to offer royalty units to  
440:1 Blue Ocean -- or to offer Blue Ocean Portfolios's  
440:2 royalty units?

440:3 A After consultation with outside counsel,  
440:4 yes.

440:5 Q And Mr. Binkholder, he wasn't involved in

440:6 the decision to offer royalty units?  
440:7 A I bounced things off of him.  
440:8 Q But it was your decision?  
440:9 A Yes.

31. One of the reasons Winkelmann decided to offer royalty units was to expand BOP's advertising efforts and increase its assets under management.

440:10 Q And the purpose of the royalty unit  
440:11 offering was to raise capital to expand Blue Ocean  
440:12 Portfolios's advertising and to increase assets  
440:13 under management?  
440:14 A There's more purposes to it.  
440:15 Q But what I just gave you, that was --  
440:16 A Some of them.  
440:17 Q That was certainly one of them?  
440:18 A Some of them, yes.

32. One reason Winkelmann decided to offer royalty units is because he was unsuccessful at obtaining a loan from a bank.

445:15 And one reason why you decided to offer  
445:16 royalty units is because no bank would loan money to  
445:17 Blue Ocean Portfolios?  
445:18 A At that point in time, the bankers I  
445:19 talked to weren't willing to extend any loans.  
445:20 Q Right. You actually got to my next  
445:21 question. You actually did talk to a banker to try  
445:22 to get a loan and the answer you got from the banker  
445:23 was no bank is going to loan Blue Ocean Portfolios  
445:24 any money?  
445:25 A That's probably -- the answer we received  
446:1 in the wake of 2008, no bank is going to loan money  
446:2 to a company like Blue Ocean Portfolios.  
446:3 Q Right. So you tried to get a bank loan,  
446:4 but you couldn't?  
446:5 A Correct.

33. Winkelmann understood that the royalty unit offering was "critical" to fund BOP's business plan. (RX-003 at BO7496.)

446:6 Q Okay. And because Blue Ocean Portfolios  
446:7 couldn't get a bank loan, it was critical to Blue

446:8 Ocean Portfolios to obtain outside financing through  
446:9 a securities offer?  
446:10 A I wouldn't say it's critical. We wanted  
446:11 to implement a business plan, it was critical.  
446:12 Q But it was critical?  
446:13 A To fund the business plan.  
446:14 Q Okay. Well, let's look at the third  
446:15 offering memorandum, page 12, and the second to last  
446:16 paragraph, the second sentence.  
446:17 In April of 2011, Blue Ocean Portfolios  
446:18 completed a royalty offering of \$650,000, 25 units.  
446:19 It gave the investors a three-time payback and an  
446:20 option to purchase 1 percent of the outstanding  
446:21 equity for each of the \$25,000 unit. This initial  
446:22 outside financing round was critical, in that it  
446:23 enabled Blue Ocean Portfolios to prove the business  
446:24 model.  
446:25 You represented that to the investors,  
447:1 right?  
447:2 A The expansion of the business was  
447:3 dependent on that financing, of course.

### **BOP's Advertising Ratios**

34. BOP's advertising ratio – also known as the advertising rate, advertising factor, conversion rate, conversion ratio, and advertising yield – was a very important metric for BOP.

447:13 Q The advertising conversion rate and  
447:14 advertising conversion ratio are different things?  
447:15 A We use conversion ratio on closing  
447:16 statistics, how many appointments closed. I think  
447:17 that's a different number, to my recollection today.  
447:18 Q Can we pull up Mr. Winkelmann's testimony.  
447:19 And that's -- there you go, page 151, and the  
447:20 question is, All right, so I mentioned that as  
447:21 conversion rate. Conversion ratio, I assume is the  
447:22 same as conversion rate and your answer is correct.  
447:23 Am I reading your testimony right?  
447:24 A That's what it says. I don't know what it  
447:25 says above it. Was it the topic advertising? I  
448:1 don't know.  
448:2 Q Okay.  
448:3 A That's what it says, I agree with you.  
448:4 Q That's what it says.  
448:5 A I agree with you on that.  
448:6 Q And so the advertising ratio, it's also

448:7 called the advertising yield or the advertising  
448:8 factor?

448:9 A We call it the advertising factor, yes.

448:10 Q And you also sometimes called it the  
448:11 advertising yield?

448:12 A Yes.

448:13 Q And this was a very important metric for  
448:14 Blue Ocean Portfolios, the advertising rate, the  
448:15 advertising yield, the advertising factor, that's a  
448:16 very important metric for Blue Ocean Portfolios?

448:17 A Yes.

35. BOP devoted significant resources to tracking its advertising ratio. Winkelmann claims that BOP “constantly” and “meticulously” monitored the ratio. (R. Prehearing Br., p. 2 (“The business model is based largely on the Firm's push for effective advertising, so it gains new clients - and the revenues they generate - for as little money as possible spent on ads. This required the Firm *constantly* to monitor not only revenues and expenses, but sources of leads, trends in advertisements, geographical strengths, source strengths, and client reactions thereto. To ensure it was maximizing efficiency, the Firm meticulously tracked this information...”))

449:3 Q And you meticulous[ly] tracked Blue Ocean  
449:4 Portfolios advertising yield data?

449:5 A Our business practices continually evolved  
449:6 the tracking of the advertising spent.

449:7 Q Right. But you or Blue Ocean Portfolios?

449:8 A Right.

449:9 Q Meticulous[ly] tracked Blue Ocean Portfolios  
449:10 advertising yield data?

449:11 A A lot of resources were spent on it, yes.

36. Winkelmann repeatedly represented to investors that the advertising ratio was the “key factor” or “key driver” for BOP’s business.

448:18 Q And you repeatedly represented to  
448:19 investors that the advertising ratio was either the  
448:20 key factor or the key driver for Blue Ocean  
448:21 Portfolios business?

448:22 A We depended on that report on those  
448:23 analytics, yes.

448:24 Q But you represented that to investors  
448:25 repeatedly that the ratio was the key factor or key  
449:1 driver in Blue Ocean's business?  
449:2 A That's correct.

37. During the Division's investigation, Winkelmann testified that BOP calculated the advertising ratio that BOP disclosed in the offering memoranda by dividing (a) total advertising spending for a given period by (b) the amount of new recurring revenue that BOP generated during that same period.

449:16 Q And the conversion ratio that Blue Ocean  
449:17 Portfolios disclosed to investors in the offering  
449:18 memorandum, the way Blue Ocean Portfolios calculated  
449:19 the rate for any given period was to divide the  
449:20 amount of money Blue Ocean Portfolios spent on  
449:21 advertising during that period by the amount of new  
449:22 recurring revenue that came in during that period?

449:23 A No.

449:24 Q Okay. Byron, can you please pull up Mr.  
449:25 Winkelmann's investigative testimony, Exhibit -- or  
450:1 page 151, lines 3 through 19.

450:2 And the question is, All right, so I  
450:3 mentioned that as the conversion rate, conversion  
450:4 ratio, I assume this is the same as conversion rate.  
450:5 Answer, correct, we continue further on the same  
450:6 page. And how would Blue Ocean Portfolios track its  
450:7 advertising spend and its yield. Well, we look at  
450:8 the total amount of advertising spent for each  
450:9 period, either quarter per month and relate that to  
450:10 the new business that came on for that same period.

450:11 And you testified to that effect?

450:12 A That's what I testified.

1450:9 Q Okay. You can take that down, Byron.

1450:10 And I think we've established here at  
1450:11 trial that you actually -- when you did testify in  
1450:12 front of Mr. Benson, you testified that the way  
1450:13 Blue Ocean Portfolios determined the advertising  
1450:14 ratio for a given period was dividing the  
1450:15 advertising spending for the period by the new  
1450:16 recurring revenues generated during that period.  
1450:17 Do you remember how you testified that way during  
1450:18 your investigative testimony?

1450:19 A That's a part of my testimony that day.

38. During his investigative testimony, Winkelmann could not explain the discrepancies between the advertising ratios disclosed in the offering memoranda and the ratios presented to him by the Division of Enforcement that were calculated using BOP's financial records.

1447:2 Q Okay. Well, let's see how your story on  
1447:3 this issue has changed over time. Can we agree  
1447:4 that when you testified during the investigation  
1447:5 in front of Mr. Benson you couldn't explain the  
1447:6 discrepancies between the advertising factors in  
1447:7 the offering memoranda and the Blue Ocean  
1447:8 Portfolios financial records shown you by Mr.  
1447:9 Benson, correct?

1447:10 A I think my testimony shows that we  
1447:11 didn't have all the 2010 financial records at the  
1447:12 OTR testimony.

1447:13 Q Right. But again, you -- you testified  
1447:14 here and you testified back at the testimony that  
1447:15 you just couldn't explain those discrepancies,  
1447:16 right?

1447:17 A Not during my OTR.

1447:18 Q Not during your testimony with Mr.  
1447:19 Benson, correct?

1447:20 A Correct.

39. Winkelmann realized after testifying during the investigation that he had been unable to explain the advertising ratio discrepancies presented to him during his investigative testimony.

477:14 And by sitting through that testimony, you  
477:15 realized that you couldn't explain the discrepancies  
477:16 between the advertising factor stated in the  
477:17 offering memorandum and the advertising factors that  
477:18 were being presented to you by the Division  
477:19 Enforcement, correct?

477:20 A On February 3rd, 2015, I did not recollect  
477:21 how we did it.

477:22 Q Okay. But you were cognizant after you  
477:23 walked out of that testimony, you couldn't explain  
477:24 what the Division was asking you about when they

477:25 presented you with discrepancies?

478:1 A They presented me with a number of  
478:2 discrepancies.

478:3 Q And you realized that walking out of that  
478:4 testimony, you know what, for whatever reason  
478:5 including, I forgot it, I couldn't explain their  
478:6 questions to their satisfaction, right?

478:7 A Well, I didn't know that. I knew there  
478:8 was discrepancies, I didn't know the level of  
478:9 dissatisfaction.

478:10 Q You knew that the Division had raised  
478:11 discrepancies with you, correct?

478:12 A Right.

478:13 Q And you knew you weren't able to reconcile  
478:14 those discrepancies at your testimony?

478:15 A Correct.

40. Winkelmann's Wells submission, which was submitted by his counsel of record in these proceedings, offers no explanation for how BOP calculated the advertising ratios presented to investors. (Exs. 345, 346).

1451:12 Q But there is no explanation for how the  
1451:13 factor numbers looked the way they did in the  
1451:14 offering memorandum, no explanation to that effect  
1451:15 in the Wells submission, correct?

1451:16 A Correct.

41. When presented at trial with his investigative testimony regarding how BOP calculated the advertising ratio, Winkelmann claimed that his investigative testimony was inaccurate.

453:3 JUDGE PATIL: So why are you testifying to  
453:4 that? Sorry. Sorry. Can you see why it appears  
453:5 there's an inconsistency?

453:6 A Absolutely and when I went into the OTR,  
453:7 the only thing I knew to prepare for was reading the  
453:8 deficiency letter from Mr. Collins. I went in there  
453:9 not revisiting advertising analytics that our team  
453:10 produced every month meticulously. This was my best  
453:11 recollection at that point.

453:12 And I like I said, I spent the last two  
453:13 years revisiting where these numbers came from. And

453:14 I am 100 percent confident that those numbers that  
453:15 are in those PPMs are accurate. Because we are  
453:16 using the culmination of the -- that would only make  
453:17 sense.

453:18 This wouldn't make sense if you were  
453:19 really managing -- we were. We were managing the  
453:20 spend of those advertising dollars. What's  
453:21 resulting today would have been a result of the past  
453:22 one month, two months, three months, two years.  
453:23 Even today we just sent our billing out.

453:24 I think the billing is going to be  
453:25 \$190,000 for our quarterly billing. How much money  
454:1 do you think we have spent on advertising the last  
454:2 two years? Maybe \$2,000. Think of the [ROI] on that.  
454:3 The culmination is from the past advertising.

454:4 JUDGE PATIL: When did you first realize  
454:5 that the testimony you had given at this stage was  
454:6 wrong?

454:7 A Well, I was trying to hurry up to put the  
454:8 wells submission together in August of 2015. The  
454:9 best I could come up with at the point, there's an  
454:10 ambiguity with the advertising, the ad factors  
454:11 published in the PPMs. Preparing for trial  
454:12 actually, we dove into every line of testimony. And  
454:13 at the time that's what I thought, but here we are  
454:14 today. I'm not --

454:15 JUDGE PATIL: Okay. So just to clarify  
454:16 what we've got on the screen there, lines 14 through  
454:17 19, that is inaccurate, correct?

454:18 A That's not the way that the calculus was  
454:19 performed.

42. At trial, Winkelmann sought to explain his investigative testimony by claiming that he did not anticipate being asked about the advertising ratios. However, in September 2014, over four months prior to Winkelmann's investigative testimony, BOP received a SEC subpoena for: "All Documents that support or tend to support the 'advertising conversion factor' (also referred to as the 'factor' or 'advertising factor') referenced in each of the Blue Ocean Certificate of Royalty Units offering memoranda." (Ex. 309, p. 9 of PDF)

1447:21 Q Okay. And you testified yesterday that  
1447:22 one of the reasons that you couldn't explain those

1447:23 discrepancies to Mr. Benson and the investigation  
1447:24 is because you didn't think he was going to be  
1447:25 asking you about the ad ratios, right?  
1448:1 A Again, I think my testimony speaks for  
1448:2 itself. To prepare for the OTR testimony I had no  
1448:3 idea what I was going to be asked about. The only  
1448:4 thing I reviewed was the items that Mr. Collins  
1448:5 brought up in the deficiency letter.

43. After stating at trial that his investigative testimony was incorrect, Winkelmann initially testified that the *numerator* component of the advertising ratio was revenue. He later reversed himself and testified that revenue composed the *denominator* component of the advertising ratio.

455:9 Q So when you say to investors that the  
455:10 advertising factor for 2011 was .79, okay, what is  
455:11 the [numerator]?  
455:12 A The current business that is coming on  
455:13 that month.  
458:1 Q I just want to know for 2011, when you say  
458:2 the factor is .9 -- .79, I'm sorry, is the  
458:3 [numerator], expense or is the [numerator] revenue?  
458:4 A The number on top is the expense.  
458:5 Q Okay. And the number on the bottom is  
458:6 revenue, right?  
458:7 A The revenue realized as culminating at  
458:8 that period.

44. Winkelmann was repeatedly unable to answer the question of how BOP determined the numerator for the .79 advertising ratio for 2011 that BOP disclosed in the second, third, and fourth offering memoranda. No witness at trial was able to explain how BOP calculated that ratio.

456:4 Q Let's do offering two, three and four  
456:5 because they all have the same representation. You  
456:6 tell your investors that for 2011, the advertising  
456:7 factor was .79, and what was the numerator?  
456:8 A I have to look at our advertising  
456:9 statistics.  
456:10 Again, the whole team put it together. It

456:11 was an elaborate complex thing. If you show me an  
456:12 exhibit. We pulled it off.

459:4 Q You also said this is data you  
459:5 meticulously tracked on a regular basis, right?

459:6 A Very complicated process.

459:7 Q So despite meticulously tracked it, you  
459:8 somehow got it wrong or forgot about it a year or so  
459:9 after the fact, right?

459:10 A Right.

459:11 Q So now fast forward, you have been sued  
459:12 and frankly your livelihood is on the line and you  
459:13 knew you were going to have to come in here and  
459:14 testify how you did it, so tell us what is -- when  
459:15 you say the factor for 2011 is .79, what was the  
459:16 advertising expense, was it the period for all of --  
459:17 was it the advertising incurred over the course of  
459:18 2011?

459:19 A I need my analytical documents. We  
459:20 developed from a three month, six month, 12 month  
459:21 look-back to see how these trends were developing.  
459:22 I'm sorry, Judge. I'm sure one of my colleagues can  
459:23 help support the explanation on it. That number was  
459:24 pulled from the current data at that time. The .79  
459:25 was pulled from the data we knew in 2012, in  
460:1 February of 2012.

460:2 Q So sitting here today, you can't say how  
460:3 you did it?

460:4 A I can't expand how we did it.

460:14 Q And when you say the enumerator for 2011  
460:15 is advertising expense, is it the advertising  
460:16 expense covering the whole year of 2011?

460:17 A I had have to look at the documents. I  
460:18 want to be accurate. You want me to be accurate?

460:19 Q Absolutely.

460:20 A Can I look at our analytical report, maybe  
460:21 that will help?

460:22 Q I think you're going to have a chance to  
460:23 do that on -- on direct examination?

460:24 A I don't want to say anything wrong.

466:14 Q I just want to make clear I'm still  
466:15 talking about the expense piece of this, right, and  
466:16 I think when you testified when you calculated the  
466:17 .78 or .79, you had three different expense periods  
466:18 to choose from? You had --

466:19 A I'm not sure about that Mr. Hanauer. I  
466:20 think, without referencing my supporting documents,

466:21 again, I can't -- I don't want to give bad  
466:22 testimony, again. I mean, I don't want to give the  
466:23 wrong testimony.  
466:24 Q I'm having a hard time with this here in  
466:25 the sense that we identified this way back at your  
467:1 testimony, right, and now it's all the way up to  
467:2 where you are on trial and you still can't tell us  
467:3 how you did it?  
467:4 A The specific -- I can tell you with the  
467:5 referenced documents, if you put up reference  
467:6 documents, I can tell you.  
467:7 Q Okay. So -- this is just a basic  
467:8 question, when you tell investors your advertising  
467:9 factor for 2011 was .79, what is the period of time  
467:10 that you are tracking the expense portion of it?  
467:11 You had mentioned a six month look-back, a 12 month  
467:12 look-back it could be --  
467:13 A I would feel more comfortable having  
467:14 Jennifer elaborate on that. I just -- because I  
467:15 don't want to tell the Court anything wrong.  
467:16 Q The buck stops with you, right?  
467:17 A I know. Judge, I wish I had my reference  
467:18 documents, Judge. I mean, I will say this, it had  
467:19 some period of time where there had been some period  
467:20 of time that culminated to the new business coming  
467:21 in that determined the advertising factor.

45. Winkelmann testified at trial that while the numerator component of the advertising ratio was advertising spending, BOP could calculate the ratio using multiple "look back" periods of spending.

467:22 Q So the [numerator] is some set period of  
467:23 time, right?  
467:24 A Yes.  
467:25 Q The expenses incurred during that set  
468:1 period of time?  
468:2 A The advertising factor.  
468:3 Q During that set period of time?  
468:4 A Yeah.  
468:5 Q Okay. But there were multiple look-back  
468:6 periods that you could use, right?  
468:7 A Well.  
468:8 Q You could look back a year?  
468:9 A We could look back a year.

468:10 Q You could look back six months?  
468:11 A Well, I know that's true in January 2013,  
468:12 we had a 12 month look-back. And I know the six  
468:13 month and year-to-date look-back was in August of  
468:14 2012. In February of 2012, I don't think we had the  
468:15 look-back calculus incorporated into our annual  
468:16 literature.  
468:17 Q But you could look back 12 months, right?  
468:18 You had the ability to -- just 12 months worth of  
468:19 past advertising, right?  
468:20 A That's correct.  
468:21 Q And you could look back a shorter period  
468:22 of time than 12 months, right?  
468:23 A Correct.  
468:24 Q And you could look back all the way to the  
468:25 beginning?  
469:1 A Correct.

46. Winkelmann agreed that the longer the period of advertising BOP looked at to calculate the advertising ratio, the more reliable the ratio would be.

485:18 But I think we can agree about this for  
485:19 the factor, that the longer the period of time that  
485:20 Blue Ocean looked at, the more reliable the factor  
485:21 would be for Blue Ocean's business planning  
485:22 purposes?  
485:23 A That's internally what we would use, yes.  
485:24 Q So the longer period you used, the more  
485:25 reliable the factor number is going to be, right?  
486:1 A Well, the more data we would have to make  
486:2 our decisions on where to allocate those advertising  
486:3 dollars, so I would say, yes, it was reliable. The  
486:4 longer the period, the more reliable it would be.

47. Winkelmann ultimately settled on testimony that the denominator component of the ratio was new recurring revenues that *resulted* from a period of advertising, as opposed to new revenues generated *during* the period of the advertising. Winkelmann agreed that he did not describe this methodology during his investigative testimony, which Winkelmann now claimed was "wrong."

471:10 Q Okay. So if we were -- if we were to put

471:11 up like you just testified that the numerator is  
471:12 called advertising expense for 2011, just say year's  
471:13 worth of advertising expense, and the denominator is  
471:14 the new reoccurring revenue that came in during  
471:15 calendar year 2011, that's not the factor that was  
471:16 represented to investors?

471:17 A No.

471:18 Q And what you're saying --

471:19 A It would have been the culmination of that  
471:20 report at that period of time, February 2012 or  
471:21 January of 2012. It would have been what's  
471:22 happening right there as a result of this previous  
471:23 spend.

471:24 Q All right. So when you say, as a result,  
471:25 so what you are saying is to calculate the 2011  
472:1 factor, you can be looking at revenues that came in  
472:2 during calendar year 2012 as long as you could tie  
472:3 them to advertising that ran in 2011?

472:4 A Yes. And our system, our evolving system  
472:5 attempted to attribute every new client to the point  
472:6 in time when the lead came in initially.

472:7 Q Can we agree, you didn't testify that way  
472:8 at your --

472:9 A I will agree I didn't remember that at the  
472:10 point of my testimony, Mr. Hanauer.

472:11 Q Okay. But you do agree that you  
472:12 meticulously tracked this for years and checked it  
472:13 all the time, but when we asked you about it, you --  
472:14 you couldn't remember; is that your testimony?

472:15 A That -- I would challenge any human being  
472:16 to sit in that room for seven hours and get banged  
472:17 on like we did with Mr. Benson and come up with  
472:18 reliable testimony. Again, I testified that day  
472:19 that I didn't visit this stuff in over two years. I  
472:20 had no idea what you wanted to talk to me about.  
472:21 And that's -- I'm sorry the testimony is wrong, but  
472:22 it is wrong.

476:8 So for the denominator portion of the  
476:9 factor you disclosed to investors, it was new  
476:10 recurring revenue that resulted from a particular  
476:11 period worth of advertising?

476:12 A Yes.

476:13 Q So for 2011, the numerator is the  
476:14 advertising spend for the year of 2011 and the  
476:15 denominator can be any new recurring revenue that is  
476:16 tied to the 2011 advertising?

476:17 A Yes. It's attributed to the lead that  
476:18 came in in 2011.  
476:19 Q And so even -- even if the revenue comes  
476:20 in sometime after 2011?  
476:21 A As I -- my example as of today, we're  
476:22 getting revenue in from advertising spent in 2011.  
476:23 Q Okay. So for instance 2011, if there's  
476:24 advertising on June 2011, but the revenue from that  
476:25 advertising doesn't come in until 2012, it's still  
477:1 appropriate to put that 2012 revenue in the  
477:2 denominator of your 2011 factor?  
477:3 A Yes. It's not perfect, but that's how we  
477:4 did it.  
477:5 Q Okay. And I think we can agree that  
477:6 you -- that's not the way you described it in your  
477:7 investigative testimony, correct?  
477:8 A Mr. Hanauer, you and I agree on that.  
1457:23 Q Okay. But -- so you testified that for  
1457:24 offerings two, three, and four, the denominator,  
1457:25 the number on bottom, was revenues resulting from  
1458:1 a period of advertising as opposed to revenues  
1458:2 that came in during the period of advertising.  
1458:3 That's how you testified, correct?  
1458:4 A Yes, that's my understanding.

48. This explanation of how BOP calculated the advertising ratio – using revenues *resulting* from a period of advertising – is the same methodology described in Winkelmann's prehearing brief and expert report.

1459:6 Q Right. So the way you testified after  
1459:7 lunch on your first day of testimony that, for  
1459:8 instance, January advertising, right, if revenue  
1459:9 came in in July from the January advertising, for  
1459:10 the purpose of the factor calculation the revenue  
1459:11 was credited to January, right?  
1459:12 A That's my understanding.  
1459:13 Q Okay. And that's the way that your  
1459:14 lawyers described it in the pre-hearing brief,  
1459:15 right?  
1459:16 A I didn't write the brief.  
1459:17 Q Well, let's just confirm that. Can you  
1459:18 pull up Mr. Winkelmann's prehearing brief, page --  
1459:19 so that's page two of the brief. Do you see it  
1459:20 says also the division fails to -- the bottom

1459:21 paragraph, please. Your lawyers write, "Also, the  
1459:22 division fails to understand the inherent fluidity  
1459:23 of advertising. If an advertisement runs in  
1459:24 January, the client reading or hearing the ad may  
1459:25 not walk in the door until May. A less detailed  
1460:1 analysis, i.e. the one the division's accountant  
1460:2 propounds, would credit May advertisements for the  
1460:3 May business. Blue Ocean wanted to be more exact,  
1460:4 so it made sure it knew the source of the customer  
1460:5 and properly credited the business to January  
1460:6 advertising expenses."

1460:7 A Correct.

1460:8 Q So do you see how your lawyers in the  
1460:9 pre-hearing brief describe the same methodology  
1460:10 that you just --

1460:11 A Yes.

1460:12 Q -- testified to, correct?

1460:13 A Yes.

1460:14 Q And we heard yesterday from your expert  
1460:15 Mr. Palubiak that he believed the methodology was  
1460:16 the same that I just read to you from your  
1460:17 pre-hearing brief and you just testified was  
1460:18 correct. Am I right?

1460:19 A I remember Mr. Palubiak discussing this.

1460:20 Q Mr. Palubiak said his understanding of  
1460:21 the methodology was revenue resulting from  
1460:22 advertising as opposed to revenue that came in  
1460:23 during the month of advertising, right?

1460:24 A Correct. Correct.

49. In the offering memoranda, BOP never disclosed to investors its methodology for calculating the advertising ratio.

484:18 Q And the concept that you are testifying  
484:19 for the first time about now about the revenue piece  
484:20 of the factor being not revenue that came in during  
484:21 the period, but revenue that was attributable to a  
484:22 period of advertising, you never disclosed that  
484:23 concept to investors in the offering memorandum?

484:24 A No.

484:25 Q You did disclose it or you didn't?

485:1 A We did not elaborate on the process to  
485:2 determine the factor in the offering memos.

485:12 Q Did the offering memorandum describe to  
485:13 investors the methodology for calculating the factor

485:14 that you testified to this morning?

485:15 A No.

756:7 Q You are never telling them how you come  
756:8 up with your key business driver, right? You can  
756:9 agree with that?

756:10 A I'll agree with that. We never  
756:11 elaborated until all the machinations and formulas  
756:12 and all the hard work and, you know, a 200-page  
756:13 spreadsheet that was not in this document. Of  
756:14 course, I mean, I'll agree to that.

### **Binkholder's Expenses Were Excluded from Advertising Expenses**

50. Winkelmann testified that advertising includes "messaging to entice an individual to take action," and that advertising includes BOP's sponsorship of a radio show.

491:17 Q Do you consider advertising to include  
491:18 messaging to entice an individual to take action?

491:19 A Yes.

491:20 Q And when Blue Ocean sponsors a show,  
491:21 that's advertising, right?

491:22 A Yes, because the commercial would be  
491:23 there, go to BlueOcean97.1.com.

51. Winkelmann agreed that had BOP included the Binkholder payments in the advertising ratio calculations, the ratio would have increased.

493:15 Q And had Blue Ocean Portfolios included the  
493:16 payments made to Binkholder as advertising expenses,  
493:17 it would have driven up the average, correct?

493:18 A Of course, if you would have increased any  
493:19 of these numbers. Any additional number you put  
493:20 into the advertising spend would affect it, of  
493:21 course.

493:22 Q That's why Mr. Collins on his charts, when  
493:23 you said the factor over statement amount, when the  
493:24 Binkholder payments were included, the factor was  
493:25 always more overstated than if they were excluded?

494:1 A Fair enough.

52. In making the decision not to include payments to Binkholder in the advertising ratio computation, Winkelmann did not consult with an accountant, IRS instructions, or FASB.

494:2 Q Okay. And you made the decision to

494:3 exclude the Binkholder payments from advertising  
494:4 expenses?

494:5 A A better way to characterize it, I made a  
494:6 decision not to include it. It wasn't even a part  
494:7 of my decision process. The first time I heard that  
494:8 was from Mr. Benson in my OTR. Before that, there  
494:9 was no consideration given to putting Binkholder in  
494:10 it.

494:11 Q But that decision, you controlled that  
494:12 process. You were the one that was the decider?

494:13 A Yes.

494:14 Q And whether the Binkholder payments were  
494:15 advertising expenses or something else, correct?

494:16 A Correct.

494:17 Q And remember yesterday when Ms.  
494:18 VonderHeide was showing Mr. Collins IRS, Internal  
494:19 Revenue Service, instructions and asking you about  
494:20 FASB?

494:21 A Yes.

494:22 Q And she was trying to get him to agree  
494:23 that the IRS instructions and FASB required Blue  
494:24 Ocean to exclude the Binkholder payments from  
494:25 advertising.

495:1 Do you remember that?

495:2 A I don't know what she was trying to do.

495:3 Q Okay. But back when you were deciding not  
495:4 to include the Binkholder payments as advertising  
495:5 expenses, you weren't consulting IRS instructions or  
495:6 FASB, correct?

495:7 A I did it with intuition.

495:8 Q In making that decision, what you said is  
495:9 intuition, you did not consult any certified public  
495:10 accountant, correct?

495:11 A Only after my OTR.

53. One of BOP's paid spokesmen was radio show host Charlie Brennan. BOP treated as advertising expenses both the payments BOP made directly to Brennan and the payments made to KMOX, the radio station which aired Brennan's show. (Ex. 86; RX-001 at BO 7253; RX-002 at BO 9405).

**Division Exhibit 159**

54. Winkelmann testified that Division Exhibit 159 was one of the documents that BOP used to track the advertising ratio. Winkelmann confirmed that Exhibit 159 contained data that was available to BOP at the time it prepared the third offering memorandum.

487:12 Q And Exhibit 159 is the type of document  
487:13 Blue Ocean Portfolios would use to track the  
487:14 advertising ratio?

487:15 A One of the documents, yes.

488:18 Q So the information contained on Exhibit  
488:19 159 would have been available to Blue Ocean's, Blue  
488:20 Ocean Portfolios in September 2012, correct?

488:21 A Some of the information -- most of the  
488:22 information because we would still have business  
488:23 coming in in June, July, August, September, going  
488:24 forward that the new client and the resulting  
488:25 anticipated revenue could be attributed back to when  
489:1 the lead first showed up.

489:2 Q So the -- but the advertising spend data  
489:3 should be set. That's not going to change as you  
489:4 move into the future, right?

489:5 A Unless there's some discrepancies on the  
489:6 invoices and there was frequently times when we were  
489:7 disputing the charges. I would think those disputes  
489:8 would be less than 15 percent of the advertising  
489:9 number.

489:10 Q So Exhibit 159 shows data that was  
489:11 available as of June -- well, the end of June 2012,  
489:12 correct?

489:13 A Yes.

489:14 Q And the third offering memorandum would  
489:15 have come out on September 1st, 2012?

489:16 A Yes.

55. The 2011 advertising spending information on Exhibit 159 was consistent with the 2011 advertising spending information on Exhibit 86, which was a chart devoted to 2011 advertising expenditures. (Compare Ex. 159 and Ex. 86).

492:4 Q And can we look at Exhibit 86, please?

492:5 Would you blow those up? So if we take any given --

492:6 I can represent to you this is for 2011, and the way

492:7 we can do that, is there any way you can pull up a

492:8 month for 159, so we can compare the two side by  
492:9 side?

492:10           So what's the advertising spend for  
492:11 January 2011 on Exhibit 86. It's \$3,024?

492:12    A    Correct.

492:13    Q    And for February, it's \$10,054?

492:14    A    Yes.

492:15    Q    And for March, if we can do that, Byron.

492:16    A    Yes.

492:17    Q    It's not exact. I think it rounds up.

492:18    A    Yeah.

492:19    Q    So it looks like the numbers are generally  
492:20 consistent between Exhibit 86 and Exhibit 159, at  
492:21 least as we are talking about 2011 monthly  
492:22 advertising spend numbers, correct?

492:23    A    Correct.

492:24    Q    And I don't -- I just want to make sure

492:25 I'm not blowing one by anybody. I will also

493:1 represent that November and December, there's like a

493:2 less than thousand dollar discrepancy for those

493:3 months. We can show the Court.

493:4           Pretty close, right?

493:5    A    Uh-huh. Yes.

56.    Winkelmann testified that for spreadsheets such as Exhibit 159, the later in time that BOP ran the advertising ratio calculation for a given period, the lower the ratio would be. This is because if BOP ran the calculation shortly after the period of advertising at issue, there would be less revenue attributable to that period than if BOP calculated the factor later, when more revenue attributable that period had been generated. While the ratio for a given period could decrease the later BOP ran the calculation, the factor could never get greater.

502:19    Q    The annual revenue factor, the longer you  
502:20 wait to do the calculation, the bigger the revenue  
502:21 number you should get, right?

502:22    A    Could be. Could grow. Again, we don't  
502:23 know what ads are going to come in, what business is  
502:24 going to be booked tomorrow that's going to be  
502:25 attributed to January.

503:1    Q    But if you try calculating January 2011,  
503:2 unlike February 1st, or if you tried calculating it  
503:3 on September 1st, you're going to get a bigger

503:4 number on September 1st, because more revenue is  
503:5 going to come in, right?  
503:6 A It would be different.  
503:7 Q Pardon me?  
503:8 A The number would be different.  
503:9 Q It's always going to be bigger the later  
503:10 you calculate it. It's never going to get smaller  
503:11 as you move into the future, right?  
503:12 Because more and more revenue keeps coming  
503:13 in from a specific month's worth of advertising. It  
503:14 may stop, but it's not going to get smaller as you  
503:15 move further in time?  
503:16 A I would agree with you on that.  
504:6 Q Yeah. So let's -- if you're calculating a  
504:7 factor for a particular month, right?  
504:8 A Yes.  
504:9 Q It's after the month has ended and you  
504:10 know the advertising spend, right?  
504:11 A At some point the advertising spending is  
504:12 solid, right. The number is good.  
504:13 Q And so the revenue piece, the revenue  
504:14 piece will -- is only going to go up the further out  
504:15 in time you perform that factor calculation?  
504:16 A Well, if the new business, I testified  
504:17 before it came in, and it was attributable that  
504:18 month, the revenue attributable to that month will  
504:19 increase.  
504:20 Q Right. It's never going to go down the  
504:21 further out you calculate the factor?  
504:22 A It shouldn't.  
505:10 Q Right. I'm not disagreeing with you on  
505:11 that. Do you understand the concept that the  
505:12 further out in time from January 2011 that you  
505:13 calculate the factor, the better the factor is going  
505:14 to get because you have more time for advertising  
505:15 for January to come in?  
505:16 Do you agree with that proposition?  
505:17 A Yes.  
505:18 Q Okay.  
505:19 A I agree with the proposition.

57. When asked whether Winkelmann or Juris had the more accurate account of how BOP calculated the advertising ratio, Winkelmann testified that Juris's account was more accurate.

1461:25 I've got to  
1462:1 ask, to the extent if any there's a conflict  
1462:2 between something that you've said about  
1462:3 calculating the advertising factor and Ms. Juris  
1462:4 said about how it was calculated, whose account is  
1462:5 more accurate?  
1462:6 THE WITNESS: Jennifer's.

### **The First Round Offering**

58. BOP began offering royalty units to investors in April 2011.

495:12 Q So Blue Ocean began offering royalty units  
495:13 to investors in April 2011, correct?  
495:14 A Correct.

59. Prior to the circulation of the first offering memoranda, Winkelmann began informing certain prospective investors of the upcoming offering. (*See, e.g.*, Ex. 7)

495:15 Q And before Blue Ocean started its general  
495:16 offering, you solicited certain individual  
495:17 prospective investors to invest, correct?  
495:18 A I shared my ideas with them. I wouldn't  
495:19 characterize it as a solicitation.

60. On February 16, 2011, Winkelmann wrote a letter to Scottrade CEO Roger Riney, which described the royalty unit investment and asked if Riney would be interested in investing. (Ex. 7 ("I wanted to give you the opportunity to review the business plan and determine whether or not you would like to purchase one or more of our royalty units.")).

61. Winkelmann's letter said that BOP would issue the royalty units in \$100,000 increments, and that BOP "already [has] 4 units reserved from friends and family members." (Ex. 7). This statement was misleading because the offering had not yet begun and BOP would not sell \$400,000 in royalty units until May 16, 2011. (Ex. 455).

496:24 Q And you tell Mr. Riney we already have  
496:25 four units reserved for friends and family members?  
497:1 A Yes.  
497:2 Q And so that's \$400,000, right?  
497:3 A Yes.

497:4 Q But you certainly hadn't sold \$400,000 in  
497:5 royalty units at this point, correct?  
497:6 A Correct.  
497:7 Q Not a single member agreed to purchase a  
497:8 royalty unit?  
497:9 A It would be personal intimate commitments,  
497:10 close friends saying, Wink, put me in for a hundred.  
497:11 Q But there hadn't even been an offering  
497:12 memorandum at this point?  
497:13 A I'm in, when it comes in, put me down for  
497:14 a hundred.  
497:15 Q Regardless what's in the offering?  
497:16 A Close friends.  
497:17 Q And so because there was no offering  
497:18 memorandum, at the time you wrote this letter, no  
497:19 one could have actually accepted an offer to  
497:20 purchase a royalty unit?  
497:21 A Correct.

62. Winkelmann's letter to Riney also stated: "We are spending about \$2,200 to land \$1 million in new AUM that generates approximately \$9,000 in recurring annual revenue." (Ex. 7). This statement conflicted with, and overstated BOP's revenue generation compared to, BOP's representation the following month in the first offering memorandum that "each \$1 million in AUM generates roughly \$8,000 in new recurring annual revenues." (RX-001, BO 7250). The \$2,200 divided by \$9,000 (0.24) advertising ratio in the letter also conflicted with BOP's advertising ratios (calculated as advertising spending for a period divided by new annual revenue generated during that period) going back to January 2010, which ranged from 0.37 to 0.44. (Ex. 440).

63. Winkelmann began circulating the first offering memorandum, dated March 31, 2011, in April 2011. Winkelmann circulated the memorandum to potential investors including advisory clients and unaccredited (non-high net worth) investors.

506:10 Q I think I'll move on. Exhibit RX 1,  
506:11 please. And this is the memorandum for the first  
506:12 offering?

506:13 A Correct.  
506:14 Q And it's dated March 31st, 2011?  
506:15 A Yes.  
506:16 Q And you began circulating this memorandum  
506:17 to prospective investors in April 2011, correct?  
506:18 A Correct.  
510:10 Q And among the potential investors you  
510:11 circulated the first offering memorandum to, were  
510:12 your advisory clients?  
510:13 A Some were advisory clients and some  
510:14 weren't.  
510:15 Q And you circulated the offering memorandum  
510:16 to both accredited and nonaccredited investors?  
510:17 A Yes.  
510:18 Q And you understand what a nonaccredited  
510:19 investor is, right?  
510:20 A I think they changed the definition in the  
510:21 last couple of years.  
510:22 Q But, generally, someone who's not a  
510:23 relatively high net worth investor, that's not an  
510:24 accredited investor?  
510:25 A Correct.  
511:1 Q Correct?  
511:2 A Correct.

64. Winkelmann authored the initial drafts of the royalty unit offering memoranda, personally reviewed and approved the final versions that BOP circulated to investors, and had ultimate control over the memoranda's content.

506:23 Q Okay. And you authored the initial draft  
506:24 of the first offering?  
506:25 A The draft, yes, would have been sent over  
507:1 to Greensfelder for review. My draft would have  
507:2 been sent to Greensfelder.  
507:3 Q Okay. And if we look at RX 106, pages 30  
507:4 to -- well, why don't we go to RX 106, page 30. Can  
507:5 you blow that up.  
507:6 That's an e-mail that you wrote to Mr.  
507:7 Morgan at Greensfelder on February 28th, 2011?  
507:8 A Correct.  
507:9 Q And the attachments are a term sheet and  
507:10 business plan for the upcoming offering?  
507:11 A Correct.  
507:12 Q Can you go to the next page. Next page

507:13 please, keep going. There-we go. Keep going,  
507:14 Byron, just so we can peruse it.  
507:15 This is the first draft of the memorandum  
507:16 offering, correct?  
507:17 A That's what it looks like.  
508:15 Q And so before you began circulating the  
508:16 first round offering memorandum to investors, you  
508:17 reviewed and approved the final version?  
508:18 A Working with our Counsel at Greensfelder,  
508:19 of course.  
508:20 Q You personally reviewed the final draft  
508:21 that goes to investors, right?  
508:22 A Yes.  
508:23 Q And you personally approved it, right?  
508:24 A Yeah.  
508:25 Q You are the only person at Blue Ocean --  
509:1 A Yes.  
509:2 Q -- that approved it?  
509:3 And this not only includes the offering  
509:4 memorandum itself, but the other documents that were  
509:5 attached to the offering memorandum, correct?  
509:6 A I would call them exhibits.  
509:7 Q The exhibits. That includes the  
509:8 subscription agreement?  
509:9 A Correct.  
509:10 Q So you reviewed and approved the  
509:11 subscription agreement?  
509:12 A Like Michael Morgan wrote it and I  
509:13 reviewed it and approved it.  
509:14 Q And in terms of the offering memorandum,  
509:15 you had ultimate control over the contents of that  
509:16 memorandum?  
509:17 A I would say that, yes.  
509:18 Q And if there was anything in the offering  
509:19 memorandum that was inaccurate, you had the  
509:20 authority to take it out?  
509:21 A After advice from counsel, had a lot of  
509:22 suggestions, of course.  
509:23 Q And you also had the ultimate authority to  
509:24 remove any item from the subscription agreement,  
509:25 correct?  
510:1 A Correct.  
510:2 Q And those questions I asked you about, you  
510:3 ultimately reviewed and approved the offering  
510:4 memorandum and the exhibits. That was the case for  
510:5 Offering Memo 2, 3 and 4 also?

510:6 A Correct.

65. The first round offering memorandum contains no disclosure that any conflict of interests exists between Winkelmann and the investors. (RX-001; Tr. 551:9-12 (“Q: A potential conflict is not mentioned in the offering memorandum, correct? A: Correct.”). The memorandum contained the following representations indicating the absence of conflicts:

- a. “...the concept of Royalty Financing appears to be a compelling way for the investors, owners and employees to align their interest.” (RX-001, BO 7250)
- b. BOP “attracts clients who are fed up with conflicts of interest prevalent at the broker/dealers where representatives/advisors make more money selling one security over another.” (RX-001, BO 7251)
- c. BOP “creates value for its clients by eliminating conflicts of interest...” (RX-001, BO 7252).
- d. “The plan is to ... be the ‘go to’ solution when investors are fed up with the conflicts of interest from their advisor/broker. This message is currently being broadcasted through advertising. (RX-001, BO 7253)
- e. “The expansion capital in the form of Royalty Units is a way to fund growth, provide immediate cash flow stream to the Royalty Unit holders, and align all interests for returns at relatively low risk.” (RX-001, BO 7260)

66. The first round memorandum, in a section called “Sales and Marketing Plan,” describes BOP’s sponsorship of Binkholder’s radio show and how the show drives leads to BOP. (RX-001, BO 7253). In the same section of the memorandum, BOP represents that it “will use a substantial portion of the proceeds of this offering and future cash flows to fund media buys for both Blue Ocean Portfolios and The Financial Coach Show.” (*Id.*).

67. The first round memorandum also represented:

A key business driver for Blue Ocean Portfolios is the client acquisition cost. Currently Blue Ocean Portfolios is spending approximately \$5,500 per month on advertising that generates leads for the sales staff to follow up on. This \$5,500

advertising spend is currently converting to approximately \$2.5 million in new assets that are generating \$25,000 in new annually recurring revenue. So, If this trend continues, each \$10,000 in new recurring revenue will cost Blue Ocean Portfolios \$2,200 in advertising - a 22/100 ratio. (RX-001, BO 7254).

68. The first offering memorandum does not disclose BOP's methodology for calculating the advertising ratio, or disclose that BOP had calculated the .22 ratio by including advertising expenses only going back to June, as opposed the January, 2010. (RX-001).

Winkelmann agreed that including advertising expenses going back to January 2010 would have resulted in a more reliable ratio.

517:9 Q Thank you, Counsel. So the offering  
517:10 memorandum, does it disclose that in calculating  
517:11 that 22/100 ratio that Blue Ocean was only tracking  
517:12 advertising expenses going back to June 2010?

517:13 A Does it say that?

517:14 Q Is that disclosed to investors --

517:15 A No.

517:17 And you wanted to give investors the most  
517:18 reliable information possible, correct?

517:19 A And conservative. Reliable and  
517:20 conservative information.

517:21 Q Certainly the most reliable, right?

517:22 A Sure.

517:23 Q And I think you just testified a little  
517:24 earlier in this afternoon session that you get more  
517:25 reliable numbers by going back further in time using  
518:1 a longer period, correct?

518:2 A Correct.

518:3 Q And as of March 2011, Blue Ocean  
518:4 Portfolios had advertising expenditures and new  
518:5 revenues for all of 2010, correct?

518:6 A Yes. We would have that information.

518:7 Q But it's your testimony in presenting this  
518:8 .22 ratio to investors Blue Ocean Portfolios didn't  
518:9 use the January through May 2010 advertising  
518:10 expenses?

518:11 A I didn't use that data. I don't recall  
518:12 what it was.

69. Winkelman testified at trial that BOP based the .22 ratio contained in the first round offering memoranda on new recurring revenues generated during the month of February 2011. This methodology differed from Winkelman's earlier trial testimony that BOP calculated the ratio using revenues resulting from a certain period of advertising. No contemporaneous document shows BOP using this methodology for the first memorandum.

519:25 Q Well, sir, you just said the way you got  
520:1 the revenue piece for the .22 factor was advertising  
520:2 revenue that came in just during the month of  
520:3 February 2011, right?

520:4 A Maybe I misunderstood the question.

520:5 THE WITNESS: Cath, one more time, please  
520:6 I want to make sure you get an accurate record.

520:7 (The reporter read back the record.)

520:8 A That is correct. I'm sorry, counsel.

520:9 BY MR. HANAUER:

520:10 Q Okay. So the methodology you are  
520:11 describing that used for the first memorandum is  
520:12 different than what you described this morning and  
520:13 at the start of the afternoon session, correct?

520:14 A Correct.

521:6 Q So for the first memorandum, you didn't  
521:7 use revenue attributable to a particular period you  
521:8 just did revenue that came in during February,  
521:9 right?

521:10 A Right.

521:11 Q But at some point later on, you said that  
521:12 the practice that Blue Ocean Portfolios used and the  
521:13 factors disclosed to investors was not revenue that  
521:14 came in during a specific period, it was revenue  
521:15 that was attributable to a specific period?

521:16 A Correct.

521:17 Q And in the second offering memorandum, you  
521:18 do not disclose to investors that you had switched  
521:19 methodologies, correct?

521:20 A No.

521:21 Q You do disclose to investors you switched  
521:22 methodologies?

521:23 A There was no disclosure on the  
521:24 methodologies, the factor was determined -- how the  
521:25 factor was determined on any of these offerings.

70. Winkelmann's testimony that BOP calculated the .22 ratio by using recurring revenues from February 2011 conflicts with his pre-hearing brief, which says that BOP used revenues generated through the middle of March.

1464:11 Q Right. So it was -- for the first  
1464:12 memorandum it was the revenue that came in from  
1464:13 February 1st, 2011 to March 1st, 2011, correct?  
1464:14 A That was the current period, yeah.  
1464:15 Q Correct?  
1464:16 A Correct.  
1464:17 Q All right. But that testimony conflicts  
1464:18 with your very own pre-hearing brief where your  
1464:19 lawyers say the revenue piece was calculated  
1464:20 through mid-March. Are you aware of that?  
1464:21 A I didn't write the brief.  
1464:22 Q All right. Well, let's go look at your  
1464:23 pre-hearing brief. Page 13 of the PDF. Page  
1464:24 eight if you're reading at home. Second full  
1464:25 paragraph. And your lawyers wrote, "Specifically,  
1465:1 when preparing the round one offering document in  
1465:2 March 2011, the firm looked back to the beginning  
1465:3 of its advertising plan, June 2010. Between June  
1465:4 2010 and the middle of March 2011, the firm had  
1465:5 spent just short of 50,000 in advertising. Spread  
1465:6 out over approximately nine months, it equated to  
1465:7 around 5300 per month in spending. Also, as of  
1465:8 mid-March 2011 the firm had brought in  
1465:9 approximately \$25,000."  
1465:10 Do you see that?  
1465:11 A That's what it says.

71. Winkelmann's testimony that BOP calculated the .22 ratio using advertising expenses only going back to June 2010 also conflicts with his investigative testimony, that BOP calculated that ratio using advertising expenses going back as far as BOP had that data.

523:23 Q Okay. So page 11, please. And the first  
523:24 paragraph. New AUM per 1 million in AUM. This is  
523:25 the key driver of the Blue Ocean model. The current  
524:1 conversion rate is 2200 per 1 million dollars. So  
524:2 currently each \$2200 spent in advertising is  
524:3 converting to new annual renewable revenue of  
524:4 \$8,000?

524:5 A That's what it says.  
524:6 Q That's what it says. And do you still  
524:7 have the calculator in front of you? What's 2200  
524:8 divided by 8,000?  
524:9 A .28.  
524:10 Q .28. But only a couple of pages earlier,  
524:11 you are telling investors it's .22?  
524:12 A That's what it says.  
524:13 Q And you don't say that this .28 is based  
524:14 only on the previous nine months, correct?  
524:15 A No.  
524:16 Q And when you testified during the  
524:17 investigation about how you came up with this  
524:18 number, you testified that you used statistics going  
524:19 back as far as Blue Ocean had them, correct?  
524:20 A I don't recall specifically what my OTR  
524:21 testimony was with regard to that.  
524:22 Q Well, let's take a look at it, please.  
524:23 A Okay.  
524:24 Q Page 167, line 14 through page 168, line  
524:25 1.  
525:1 Q The question is, you'll see that the new  
525:2 AUM per 1 million AUM reads this is the key driver  
525:3 of the Blue Ocean model. The current conversion  
525:4 rate is \$2200 per 1 million dollars. So currently  
525:5 each \$2200 spent in advertising is converting to new  
525:6 annual renewable revenue of 8,000.  
525:7 Would you agree that neither Exhibit 43  
525:8 nor Exhibit 44 supports the statement and you  
525:9 respond as so far as this pro forma is looking  
525:10 further back than a few months to justify that 2200.  
525:11 That's the only response I can. We just wouldn't  
525:12 make that up. It would have to be based on  
525:13 statistics, the longest we had, correct?  
525:14 A That was based on my note.

72. In a later section of the first offering memorandum, BOP represents: "The current conversion rate is \$2,200 per \$1mm. So currently each \$2,200 spent in advertising is converting to new annual renewable revenue of \$8,000." (RX-001, BO 7255). Winkelmann agreed that \$2,200 divided by \$8,000 is .28, which is different than the .22 advertising ratio disclosed earlier in the memorandum.

523:23 Q Okay. So page 11, please. And the first  
523:24 paragraph. New AUM per 1 million in AUM. This is  
523:25 the key driver of the Blue Ocean model. The current  
524:1 conversion rate is 2200 per 1 million dollars. So  
524:2 currently each \$2200 spent in advertising is  
524:3 converting to new annual renewable revenue of  
524:4 \$8,000?  
524:5 A That's what it says.  
524:6 Q That's what it says. And do you still  
524:7 have the calculator in front of you? What's 2200  
524:8 divided by 8,000?  
524:9 A .28.  
524:10 Q .28. But only a couple of pages earlier,  
524:11 you are telling investors it's .22?  
524:12 A That's what it says.  
524:13 Q And you don't say that this .28 is based  
524:14 only on the previous nine months, correct?  
524:15 A No.

73. The first round memorandum represented that “the investor will receive *no less than* 0.25% of the cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$75,000.” (RX-001, BO 7255) (emphasis added). The memorandum does not say that investors will only receive 0.25%.

523:17 Does this memorandum say that investors  
523:18 are only going to get .25 percent and nothing more?  
523:19 A It says, No less.  
523:20 Q Does it say anywhere they will only get  
523:21 .25 percent?  
523:22 A No. It says what it says.

74. The first offering memorandum contained a chart showing anticipated payback times based on the monthly percentage of revenues paid per royalty unit (ranging from 0.25% to 1.5%) and the “New AUM Cost Per \$1MM.” (RX-001, BO 7256). The table did not allow an investor to calculate the payback time for minimum 0.25% payments and an advertising ratio greater than 0.38.

527:2 Q Just the top table, Byron.  
527:3 A That's just showing the various payouts

527:4 they could be.  
527:5 Q Right. And how it effects the months to  
527:6 pay back, right?  
527:7 A Correct.  
527:8 Q And .25 is the forward because that's the  
527:9 minimum investors can get, right?  
527:10 Q But you are showing them how things can go  
527:11 if you raise the payout all the way up to 1,5  
527:12 percent, right?  
527:13 A It was my attempt to show them different  
527:14 outcomes, favorable outcomes.  
527:15 Q Right. You want the investors to know  
527:16 what the payback time is going to look like. If  
527:17 it's a .25 percent payout or if you choose to pay  
527:18 them more, correct?  
527:19 A Correct.  
527:20 Q And the top row, new AUM costs for \$1  
527:21 million, that's just another way of calculating the  
527:22 factor, right?  
527:23 A Different ways, different factors in the  
527:24 assumption pro forma, how sensitive this is.  
527:25 Q I know you don't actually disclose the  
528:1 factor here, but you're saying how much it costs to  
528:2 bring in -- how much advertising it costs to bring  
528:3 in \$1 million of new AUM. That's the top line,  
528:4 right?  
528:5 A Correct.  
528:6 Q And if you wanted to get the factor, you  
528:7 would divide any of those numbers by \$8,000 because  
528:8 that's how much a new million dollars in asset under  
528:9 management is bringing in revenues to Blue Ocean,  
528:10 right?  
528:11 A I think if you backed out and looked at  
528:12 the whole page, there's an assumption table and  
528:13 \$8,000 is the assumption we are using for this  
528:14 forward-looking statement.  
528:15 Q And so what is -- can you break out the  
528:16 calculator again and keep that blown up, please,  
528:17 Byron?  
528:18 What is \$3,000 divided by \$8,000?  
528:19 A .38.  
528:20 Q So that's a factor of .38, right?  
528:21 A Yes.  
528:22 Q And so based on this table, if an investor  
528:23 wanted to know what their payback time would be at  
528:24 the minimum payout amount for a factor above .38,

528:25 they couldn't even do it, right?  
529:1 A No.  
529:2 Q Could they do it based on that table?  
529:3 A No.

75. According to the table, even if BOP doubled the minimum monthly payment percentage to 0.5%, with an advertising ratio of .38 the time to payback would be more than 7 years. (RX-001, BO 7256).

529:4 Q And if you double the minimum payout  
529:5 amount, so you're now at .5 percent, right, and the  
529:6 ad ratio is 3.8 which you just calculated. That's  
529:7 in the \$3,000 category. It's more than seven years  
529:8 to pay back, correct?  
529:9 A That's what it says, yeah.  
529:10 Q And that's doubling the payout amount,  
529:11 right, the .5?  
529:12 A Correct.

76. That table was based on an assumption that BOP would generate \$6 million per month in new assets under management. (RX-001, BO 7256 ("Business Assumptions...New Assets Per Month: \$6,000,000)). However, BOP never generated close to that much new business per month. Winkelmann agreed that the higher the new AUM per month assumption for the table, the faster the payback time.

1471:13 Q Right. And in this chart, it's all  
1471:14 based on an assumption that Blue Ocean Portfolios  
1471:15 is bringing in \$6 million in new AUM a month,  
1471:16 correct?  
1471:17 A Well, there's a lot of assumptions here.  
1471:18 Q But one of them is six million bucks in  
1471:19 new AUM a month, right?  
1471:20 A That's the -- we have to take the  
1471:21 advertising spend for the period, monthly  
1471:22 advertising budget of 15,000. So the 6 million  
1471:23 would be a function of the 15,000. So if you  
1471:24 dialed it down to 3,000 the number would drop  
1471:25 dramatically and the whole lookup tables would  
1472:1 change.  
1472:2 Q But you're assuming six million bucks a

1472:3 month in the --  
1472:4 A And a \$15,000 advertising spend, yes.  
1472:5 Q Okay. And if -- keeping all other  
1472:6 factors equal, but if the new assets per month  
1472:7 went down, keeping everything else equal, the  
1472:8 payback time goes up, right?  
1472:9 A Correct.  
1472:11 Q Okay. And at the time of the first  
1472:12 memorandum Blue Ocean's historical AUM growth was  
1472:13 not \$6 million a month, right?  
1472:14 A Neither was our advertising spend.  
1472:15 Q And so let's look at page nine of RX1,  
1472:16 first paragraph under business drivers. And there  
1472:17 you're saying Blue Ocean is bringing in \$2.5  
1472:18 million a month in new assets, right?  
1472:19 A That's what was currently coming -- came  
1472:20 in that period.  
1472:21 Q Right. At the time of that assumption,  
1472:22 right?  
1472:23 A Well, it's the time we published the  
1472:24 offering memorandum. We brought in 2.67 million,  
1472:25 which is approximately 2.5 million. That was  
1473:1 culminating from an average -- average spend of  
1473:2 5500 a month.  
1473:3 Q And can we go to exhibit RX6? Or RX76,  
1473:4 I'm sorry. And this is one of your exhibits?  
1473:5 A Yes.  
1473:6 Q And it shows how Blue Ocean's AUM  
1473:7 increased over time?  
1473:8 A Yes.  
1473:9 Q And at the time of the first memo Blue  
1473:10 Ocean wasn't bringing in \$6 million in new AUM a  
1473:11 quarter, much less a month, right?  
1473:12 A No, because the advertising was much  
1473:13 lower than \$15,000.

77. The first offering memoranda represented: "the key business driver will be the ability of management to persistently convert advertising spending to new clients and new recurring revenues at a ratio of less than 4/10. Higher conversion ratios will cause the payback period to be drawn out lowering investor returns." (RX-001, BO 7258)

531:1 Q So you're saying the key business driver  
531:2 is keeping the factor below .4, right?

531:3 A That's what it says.  
531:4 Q And that is consistent with the table we  
531:5 just looked at where if the factor is above .4 and  
531:6 you used the minimum payout and an investor can't  
531:7 even figure out how long it's going to get paid --  
531:8 they're going to get that back because it will be  
531:9 ten years, right?  
531:10 A Yeah. It's a forward-looking document, if  
531:11 you want to conclude that. It's up to you.  
531:12 Q You are telling investors that the key  
531:13 business driver of the company, the key factor is  
531:14 keeping the factor less than .4, right?  
531:15 A That's what it says.

78. The first offering memorandum represented: "When investors have been paid back 3x their original investment they will have an option to purchase 1% of Blue Ocean Portfolios, LLC for \$100,000." (RX-001, BO 7257)

530:12 Q So at first round investor, they don't  
530:13 just get a royalty unit, they also get a right to  
530:14 eventually -- they get a warrant to eventually  
530:15 purchase 1 percent of Blue Ocean Portfolios, right?  
530:16 A Correct.

79. Attached as Exhibit 18 to the first offering memorandum was a copy of a PowerPoint presentation.

532:17 Q And Footnote 18 says, Exhibit 18 Investor  
532:18 PowerPoint Presentation. And a copy of the  
532:19 PowerPoint presentation is actually included with  
532:20 the first round offering memorandum, correct?  
532:21 A Yes.  
532:22 Q And let's go to page 109 of Exhibit 1.  
532:23 This is the presentation?  
532:24 A It looks to be it.

80. That PowerPoint presentation contained the following representations:
- a. "Growth Attributed to Advertising and Radio Show" (RX-001, BO 7354)
  - b. "Advertising Efficiency: Spending Approximately \$25 to Land \$100 in Recurring Annual Revenue." (RX-001, BO 7355)

- c. "Goal – Maintain Advertising Yield Conversion \$25/\$100." (RX-001, BO 7355)
- d. "Royalty Units Summary...Right to at Least 0.25% of Monthly Cash Receipts. Plan is to be higher! Investors get repaid first!" (RX-001, BO 7356)
- e. "Payback Time Depends on...Advertising & Lead Conversion Efficacy." (RX-001, BO 7356)
- f. "Blue Ocean Portfolios: Conflict Free Wealth Management...Eliminates Conflicts." (RX-001, BO 7360)

81. On April 25, 2011, Winkelmann sent an email to potential royalty unit investor Dan Bean. (Ex. 32) Winkelmann wrote: "thank you for pointing out the ambiguity in the offering document. I read it again several times and agree with you that it could have been written much better – certainly not by best effort." (Ex. 32). Winkelmann agreed that his email exchange with Mr. Bean put him on notice that there could be ambiguities in the first offering memorandum to which Winkelmann needed to pay close attention.

545:18 Q So this e-mail exchange with Mr. Bean that  
 545:19 puts you on notice that there could be ambiguities  
 545:20 in the offering memorandum and you need to pay close  
 545:21 attention to them?  
 545:22 A Yes.

82. Winkelmann further wrote to Mr. Bean: "Last quarter our assets under management increased \$11 million. The new recurring annual revenue that will be realized from these new assets is about \$100,000. We spent approximately \$22,000 last quarter in advertising to generate this new business. So we are investing 22 cents and getting back 1 dollar in recurring revenue." (Ex. 32). Winkelmann agreed that he was referring to the first quarter of 2011, which had ended at the time of his email.

544:17 Q You are basically conveying to Mr. Bean  
 544:18 again that for the first quarter of 2011, which has  
 544:19 ended, Blue Ocean at a .22 factor?

544:20 A That's what it says.

83. Contrary to Winkelmann's email to Mr. Bean, for first quarter of 2011, BOP spent \$18,685 on advertising and generated \$42,070 in new recurring annual revenues. (Ex. 440). \$18,685 divided by \$42,070 results in an advertising ratio of .44, not 0.22.

84. On May 3, 2011, Winkelmann wrote a letter to advisory client Mark Funfsinn advising him of the royalty unit offering. (Ex. 40).

546:15 Q How about we just call him, Mark. So

546:16 Mark, Mr. Funfsion, is still a client?

546:17 A Yes, he is still a client, long-term

546:18 client.

546:19 Q Long-term client. And down in the third

546:20 paragraph, you're telling him about the royalty unit

546:21 offering, right?

546:22 A Yes.

85. Winkelmann's letter to Mr. Funfsinn stated: "We are spending about \$2,500 to land \$1 million in new assets that generate approximately \$8,000 in recurring annual revenue." (Ex. 40). \$2,500 divided by \$8,000 results in an advertising ratio of .31, which differs from the .22 ratio disclosed in the first offering memorandum.

547:14 And up in the first paragraph, you write,

547:15 We are spending about \$2500 to land \$1 million in

547:16 new assets that generate \$8,000 in recurring annual

547:17 revenue?

547:18 A Okay. That's what it says.

547:19 Q That's what you wrote to your client, Mr.

547:20 Funfsion?

547:21 A Yes, that's what it says.

547:22 Q You have the calculator in front of you.

547:23 What sort of ratio is that?

547:24 A .31.

547:25 Q .31. And at the time of your letter to

548:1 Mr. Funfsion, the first round offering is still

548:2 ongoing, right?

548:3 A Yes.

548:4 Q And that's the first round offering

548:5 memorandum where you are telling investors Blue

548:6 Ocean Portfolios is a factor of .22?

548:7 A Correct.

86. On May 9, 2011, Winkelmann sent an email to Binkholder, with the following subject line: "Royalty Units." (Ex. 44). The entirety of the body of the email stated: "We need more!" (Ex. 44). Winkelmann testified that he was conveying to Binkholder that BOP "need[ed] more money from the issuance of the royalty units." (Tr. 553:22-554:1).

87. On May 10, 2011, Mr. Funfsinn emailed Winkelmann with questions about the royalty unit offering memorandum. (Ex. 45). Winkelmann responded: "I understand the document is not perfect and I appreciate that you took the time to review." (Ex. 45).

Winkelmann agreed that, after Mr. Bean, Mr. Funfsinn was a second potential investor pointing out an ambiguity in the first round offering memorandum.

555:8 So in this interchange, a second investor  
555:9 in the span of a month or two is now advising you  
555:10 there are ambiguities in the offering document and  
555:11 you are conceding that the document is not perfect,  
555:12 right?

555:13 A Yes...

555:19 Q So this is the second investor in a month  
555:20 or two telling you the offering document, offering  
555:21 memorandum, is ambiguous? This is not the separate  
555:22 points, right, that Mr. Bean did?

555:23 A I don't know what the ambiguity was with  
555:24 Mr. Bean.

555:25 Q This is a second investor pointing out an  
556:1 ambiguity, right?

556:2 A Yes.

88. On May 17, 2011, Winkelmann sent an email to his advisory client Mike King, writing: "If you are going to do the Royalty Unit you will need to get with Sara for the IRA paperwork. So far we have raised about \$650,000 we are going to close the offering at the end of May." (Ex. 50)

556:11 A Mr. King was a former employee, former rep

556:12 of Blue Ocean Portfolios. An existing client and  
556:13 prospective royalty unit subscriber.  
556:14 Q And you are telling Mr. King, that if he  
556:15 wants to invest in the royalty unit, he needs to get  
556:16 his money in by the end of May because Blue Ocean is  
556:17 going to close the offer?  
556:18 A I say in the paperwork you need to get  
556:19 with Sarah for the IRA paperwork.  
556:20 Q And you say, Blue Ocean has raised  
556:21 \$650,000 at that point?  
556:22 A It says about 650,000.

89. Contrary to Winkelmann's email to King, as of May 17, 2011, BOP had only raised \$425,000, and the first round offering would continue until the last first round investor purchased his royalty unit on July 13, 2011. (Ex. 455).

**After the First Royalty Unit Offering Closed, BOP's Financial Situation Worsened and Binkholder Received an Investment Adviser Bar**

90. On October 18, 2011, Winkelmann sent an email to Binkholder attaching BOP's financial statements. (Ex. 70). Winkelmann wrote: "I am just a little worried! Our burn rate is higher than we want – the AUM is lower than we projected. We need to stop spending and start closing!" (Ex. 70). Winkelmann was conveying to Binkholder that BOP's expenses were higher than anticipated and BOP's revenues were lower than anticipated.

560:20 Q And you write to Mr. Binkholder, I'm just  
560:21 a little worried, right?  
560:22 A Correct.  
560:23 Q And you write our burn rate is higher than  
560:24 we want it, correct?  
560:25 A Correct.  
561:1 Q And you write the AUM is lower than we  
561:2 projected?  
561:3 A Correct.  
561:4 Q And you write we need to stop spending and  
561:5 start closing?  
561:6 A Correct.  
561:7 Q You are conveying the expenses are higher  
561:8 than you thought they were and the revenues are  
561:9 lower than you thought they were going to be?  
561:10 A I was managing the business.

561:11 Q And you're conveying this to Mr.  
561:12 Binkholder, right?  
561:13 A Correct.

91. On October 20, 2011, Winkelmann sent an email to royalty unit investor and advisory client Jason Grau. (Ex. 71). In that email, Winkelmann presented positive information about BOP, including representing that BOP "grew 14.5% for the quarter." (Ex. 71). Winkelmann's email to Grau contained none of the negative information Winkelmann disclosed to Binkholder in his email from two days earlier. (Compare Ex. 70 and Ex. 71).

563:3 Q This is positive information that you are  
563:4 giving to Mr. Grau, right?  
563:5 A Optimistic.  
563:6 Q You're telling him business is good?  
563:7 A Yes.  
563:8 Q Let's go to Mr. Grau's reaction. Mr. Grau  
563:9 writes, Thanks for the update. Sounds like, I think  
563:10 it's a typo, Thins are going well. Do you see that?  
563:11 A Yes.  
563:12 Q Mr. Grau, he was an advisory client,  
563:13 right?  
563:14 A Correct.  
563:21 Q Okay. But regardless of where that duty  
563:22 lies, you didn't tell Mr. Grau that Blue Ocean  
563:23 Portfolios burn rate was higher than you wanted,  
563:24 right?  
563:25 A Yeah, sure. I gave him the high lights.  
564:1 Q You didn't tell him that the AUM was lower  
564:2 than you had projected, right?  
564:3 A No.  
564:8 Q And did you tell Mr. Grau that Blue Ocean  
564:9 needs to stop spending and start closing?  
564:10 A That would be an internal communication  
564:11 inside the company.  
564:12 Q So you didn't give Mr. Grau the  
564:13 highlights. What you did is you gave him the good  
564:14 news, but you left out the bad news, right?  
564:15 A You can surmise that that way.

92. On December 20, 2011, Winkelmann sent an email to Binkholder with the subject line: "Blue Ocean Cash Projections." (Ex. 83). In the email, Winkelmann wrote:

We are going to end the year with about \$230,000 in cash. Since June 1<sup>st</sup> we have spent \$502,000 and the AUM have increased by \$20 million. In other words we will have spent \$3.14 in total expenses on every new \$1.00 in recurring revenue. From just the advertising expense perspective we would have spent a total \$164,000 since June or annualized amount of \$328,000. So we are spending approximately \$1.03 in advertising on every \$1.00 in new recurring revenue. Of course this is at least twice as high as we projected last winter. The result is at this pace we are approximately \$250,000 under capitalized and will run out of cash in April or May. If we want to put real salaries of \$10,000 each into the mix for next year then of course the number is much higher – more like \$575,000 under capitalized. (Ex. 83, BO 4920)

93. Winkelmann's email to Binkholder presented two options. The first was reducing total monthly expenses by \$18,000. (Ex. 83, BO 4920). Winkelmann wrote of this option:

"This would mean cutting advertising and general office expenses. Basically watching every penny spent – which means probably cutting the \$2,000 per month that we each get.....more pain and suffering!" (*Id.*). At the time of the email, Winkelmann and Binkholder were each receiving \$2,000 per month from BOP.

584:6 Q So at the time of this email, you and Mr.  
584:7 Binkholder were each getting \$2,000 a month from  
584:8 Blue Ocean Portfolios, correct?  
584:9 A Correct.

94. The second option presented in Winkelmann's email was: "Raise additional \$1.8 - \$2.0 million in capital for the general purpose of funding the Chicago office. This may be more work but also more reward since the pro-forma would include at least \$8,500 for each of us each month. This would be a bonanza..." (Ex. 83, BO 4920). Winkelmann testified that of the two options, it would be better for him to receive \$8,500 per month as opposed to \$2,000 per month.

586:3 Q Let's look at the two options, which is  
586:4 cutting your compensation from \$2,000 per month to  
586:5 nothing, more pain and suffering. And the other one  
586:6 is the bonanza of you and Binkholder getting \$8500  
586:7 every month?  
586:8 A Quite a bonanza, 8500 each.  
586:9 Q Those are the two options, right?

586:10 A I think the bonanza would be for the AUM  
586:11 conversion, not for us individually.  
586:12 Q But you certainly aren't complaining if  
586:13 your compensation is 8500 as opposed to zero, right?  
586:14 That's good for you?  
586:15 A Good. Better for me.  
586:16 Q Certainly better for you?  
586:17 A Correct.  
586:18 Q It's better for Mr. Binkholder?  
586:19 A Correct.

95. Winkelmann concluded his email to Binkholder by recommending that BOP initiate a second royalty unit offering: "So I figure we should be bold and raise Blue Ocean Royalty 2 with a conversion rate of 2.25x." (Ex. 83, BO 4920). Winkelmann agreed that he was advocating raising more money from investors so that he could increase his own compensation.

587:19 Q But you were advocating raising more money  
587:20 from investors, so you could raise your own  
587:21 compensation, correct?  
587:22 A This is what I was noodling on that day,  
587:23 correct.

96. Winkelmann was shown internal BOP financial materials (Ex. 395, BO 5317) which Winkelmann agreed were created around the same time as his December 20, 2011 email to Binkholder.

589:19 Q So can we safely assume, then, the date on  
589:20 this ad expense summary in 395 is from somewhere  
589:21 close in time to the date on your email to Mr.  
589:22 Binkholder, which is December 20th, 2011?  
589:23 A Yes.

97. Those financial materials contained an "Action plan" of reducing monthly advertising spending by \$7,000 and increasing Winkelmann's and Binkholder's monthly compensation by \$8,000, to \$10,000. (Ex. 395, BO 5317).

590:3 Q And the first piece of the action plan is  
590:4 to drop monthly advertising spending by \$7,000,  
590:5 correct?

590:6 A Correct.  
591:20 Q Okay. So we've talked about that. Add  
591:21 Brian Jim, \$10,000?  
591:22 A Correct.  
591:23 Q And you are talking about raising your and  
591:24 Mr. Binkholder's compensation?  
591:25 A Correct.  
592:1 Q And you are actually talking about going  
592:2 from the \$2,000 a month you received and raising  
592:3 that by \$8,000 a month?  
592:4 A Correct.

98. In late December 2011, Winkelmann learned that the Missouri Division of Securities barred Binkholder from acting as an investment adviser. (Order on Stipulations, Nov. 15, 2016, Finding of Fact No. 56). Winkelmann first saw the bar order on December 27 or 28, 2011. (*Id.*).

99. In the "Findings of Fact" section, the bar order contains the finding that "Binkholder offered and sold promissory notes in entities under the ownership and/or control of Binkholder ('Binkholder Entities') to Binkholder's investment advisory clients." (Ex. 84, ¶ 15(c)). The bar order additionally found that "Binkholder did not disclose to investors the ...the potential conflict of interest that could affect the advisory relationship between Binkholder and the investors." (Ex. 84, ¶ 16).

100. On January 20, 2012, Winkelmann sent an email to royalty unit investor James Zenner. (Ex. 91). In that email, Winkelmann stated: "In 2011 we spent \$214,000 in advertising and increased the AUM by 24 million which equals approximately \$240,000 in new recurring revenue. So [for] each \$0.89 in advertising spent returned \$1.00 in new recurring annual revenue. If you recall from our business plan last March, we were projecting a much more favorable conversion of approximately \$0.30 in spending for each new dollar in recurring

revenue.” (Ex. 91, BO 418). Winkelmann also wrote that he had decided to lower BOP’s monthly advertising spending by \$7,000, from \$19,000 to \$12,000 per month. (*Id.*)

593:18 Q And Mr. Zenner is one of the first  
593:19 investors in round one royalty unit offering,  
593:20 correct?  
593:21 A Correct.

101. On January 27, 2012, Winkelmann emailed Jennifer Elbert (Juris), asking her to keep a “running line chart that tracks monthly add spend v monthly conversion factor.” (Ex. 94, p. 1). Winkelmann’s email concluded by writing: “The lower we get that conversion factor the better.” (*Id.*)

102. On February 8, 2012, Ed Mahoney – a royalty unit investor, BOP advisory client, and Winkelmann’s relative through marriage – emailed Winkelmann, and asked whether his royalty unit investment’s growth “depend on you getting more customers” and whether “the worth of your company grow[s] any way other than new customers.” (Ex. 97, BO 878). In his response to Mahoney’s email, Winkelmann wrote: “Last year we spent \$0.78 in advertising to obtain \$1.00 in new recurring revenue.” Winkelmann was conveying to Mahoney that BOP’s advertising ratio for 2011 was .78 (Tr. 599:12-14). Winkelmann concluded by writing the “bulk of investor returns will be in years 3-5.” (Ex. 97, BO 877).

597:12 Q And Mr. Mahoney was a first round  
597:13 investor, correct?  
597:14 A Correct.  
597:15 Q He was also a client?  
597:16 A And a family member.  
597:17 Q Through marriage --  
597:18 A Yeah.  
597:19 Q -- and the like, yes?  
597:20 A Yes.  
599:12 Q So you are telling Mr. Mahoney that the  
599:13 factor for 2011 was .78, right?  
599:14 A Yes.

## The Second Royalty Unit Offering

103. On February 22, 2012, Winkelmann emailed James Zenner, asking him if he wanted to review the second royalty unit offering. (Ex. 102, BO 423 (“Please let me know if you have any interest in reviewing Blue Ocean Portfolios Royalty 2 Offering”). In that email, Winkelmann wrote: “In 2011 we spent an average of \$0.78 in advertising to generate \$1.00 new dollar in recurring revenue.” (Ex. 102, BO 423). This conveyed an advertising ratio of .78.

602:21 Q And you write to him, We are improving our  
602:22 advertising follow-up and closing procedures. The  
602:23 key factor for our business is how efficiently the  
602:24 advertising dollars spent can be converted into  
602:25 recurring revenue.

603:1 In 2011, we spent an average of 78 cents  
603:2 in advertising to generate 1 dollar in new recurring  
603:3 revenue. Do you see that?

603:4 A Yes.

603:5 Q That's a .78 factor, right?

603:6 A Correct.

104. On February 27, 2012, royalty unit investor Jason Grau emailed Winkelmann and asked if his royalty unit “payback [was] going as you planned, if not what is being done for adjustments to get back on target.” (Ex. 104, BO 971). In his response email, Winkelmann wrote that the “payments/revenue growth are a little behind projections but we are not worried...” (*Id.*). Winkelmann’s email did not provide any additional negative information about BOP’s finances. (*Id.*). Winkelmann testified that BOP’s payments to royalty unit investors were not as high as projected, even before any regulatory investigations.

604:17 Q And Mr. Grau, he's concerned he's not  
604:18 getting paid what he thought he was going to from  
604:19 the first round royalty unit?

604:20 A That's what it says.

604:21 Q And let's go up, the next email. And you  
604:22 confirm that the payments revenue growth are a  
604:23 little behind projections, but we're not worried.

604:24 And this is well before any is SEC investigation  
604:25 writing?

605:1 A Correct.  
605:2 Q This is before a Missouri Securities  
605:3 Division investigation in Blue Ocean Portfolios,  
605:4 correct?  
605:5 A Correct.  
605:6 Q But the payments to the royalty unit  
605:7 holders are still behind projections, correct?  
605:8 A They're not increasing as fast as we  
605:9 initially projected.

105. On February 28, 2012, BOP and Binkholder entered into an amended Exclusive Marketing & Sponsorship Agreement. (Ex. 106). BOP agreed to continue sponsoring Binkholder's shows and Binkholder agreed to continue to promote and generate leads for BOP. (Ex. 106, §§ 1.01 and 1.03). BOP also agreed to pay Binkholder at least \$7,000 per month, in addition to reimbursing Binkholder for expenses associated with his shows. (Ex. 106, § 1.02).

605:17 Q And you are revising your marketing and  
605:18 sponsorship agreement with Mr. Binkholder, correct?  
605:19 A Correct.  
605:20 Q One of the reasons you are revising it is  
605:21 because of the Missouri bar order and you are trying  
605:22 to modify what Mr. Binkholder could or couldn't do  
605:23 regarding Blue Ocean Portfolios's clients?  
605:24 A Correct.  
605:25 Q Let's go to the next page, Section 101.  
606:1 And it looks like Blue Ocean is still going to  
606:2 sponsor, Mr. Binkholder's website social media  
606:3 sites, radio shows and television shows?  
606:4 A Correct.  
606:5 Q And let's go down to Section 102. And it  
606:6 looks like you agree to pay Mr. Binkholder a sum of  
606:7 \$7,000 a month?  
606:8 A Correct.  
606:15 Q Well, in any event, we are now a couple of  
606:16 months past the bar order you are contractually  
606:17 binding your company to pay Mr. Binkholder a monthly  
606:18 sum of \$7,000 a month, correct?  
606:19 A That's correct.  
606:20 Q And that's above and beyond his direct  
606:21 business expenses, correct?  
606:22 A Correct.  
606:23 Q And let's see what Mr. Binkholder has to

606:24 do to get that money. He's got to prominently and  
606:25 exclusively promote Blue Ocean Portfolios on his web  
607:1 show, radio and TV show and social media site,  
607:2 correct?

607:3 A Correct.

607:4 Q And he's got to exclusively let Blue Ocean  
607:5 Portfolios generate leads from the websites and the  
607:6 shows, right?

607:7 A Correct.

106. On March 7, 2012, Winkelmann emailed Sara Meystadt and Jennifer Elbert (Juris) edits and comments he had made for the second round offering memoranda. (Ex. 110). One of the comments, in the Advertising Yield Factor section of the memorandum, read as follows: "This advertising factor for 2011 was 0.78. So far, in 2012 this factor has dropped to 0.59 [earlier you have 0.50]." (Ex. 110, p. 2 of PDF). Winkelmann agreed that this comment was alerting him or his staff that an inconsistency existed in the memorandum relating to the advertising factor.

608:24 Q So in any event, either you are alerting  
608:25 your staff that there's an inconsistency in the memo  
609:1 regarding the advertising factors, or your staff is  
609:2 alerting you there's an inconsistency, right?

609:3 A Yes.

609:4 Q And you were paying very close attention  
609:5 to the advertising ratio information that Blue Ocean  
609:6 Portfolios was disclosing to investors, right?

609:7 A Yes.

107. BOP initiated the second royalty unit offering on March 10, 2012, the date of the second offering memorandum. (RX-002). The second offering continued through May 22, 2012, and raised a total of \$350,000 from ten investors, seven of whom were BOP clients. (Ex. 455).

659:19 Q Okay. Let's go to Exhibit 2. It's  
659:20 the -- or RX2. That's the second round offering  
659:21 memorandum, and I think this is where we picked --  
659:22 left off chronologically. This is dated March

659:23 10th, 2012?  
659:24 A Correct.  
659:25 Q And this is March 10th, 2012. That's  
660:1 when the second offering began.  
660:2 A Yes.

108. The second offering memorandum stated: "The key driver to the Blue Ocean Portfolio model is the efficacy or yield of the money spent on advertising...The key indicator on the advertising efficacy is to determine how much advertising is needed to generate one additional dollar in new recurring revenue. In 2011, this 'factor' was 0.79. Or in other words, Blue Ocean Portfolios spent \$0.79 in advertising to buy \$1.00 in new recurring annual revenue." (RX-002, BO 9400). Later in the memorandum, BOP represents: "**Advertising Yield Factor**; this is the key driver of the Blue Ocean Portfolios model. This advertising factor for 2011 was 0.78. So far in 2012, this factor has dropped to 0.62." (RX-002, BO 9411) (emphasis in original).

109. Winkelmann testified that there was a change in the methodology used to calculate the advertising ratios presented in the first and second offering memoranda. According to Winkelmann, for the first memoranda, BOP calculated the factor by dividing BOP's advertising spending going back to June 2010 by its new recurring revenues generated in February 2011. According to Winkelmann, for the second offering memoranda, BOP divided its advertising spending for the year of 2011 by new recurring revenue that resulted from, or could be traced to, the 2011 advertising.

661:4 Q But it was just revenue that came in  
661:5 during a single month regardless of when the  
661:6 advertising that led to that revenue was expensed,  
661:7 right?  
661:8 A It's my recollection yesterday I  
661:9 testified that the round one number was a result of  
661:10 the new business that culminated in February of  
661:11 2011 relative to the advertising spend going back

661:12 to the average advertising spend going back to June  
661:13 2000 --  
661:14 Q Right, but the --  
661:15 A -- 10.  
661:16 Q The denominator piece, just the new  
661:17 revenue, that just came from a single month, right?  
661:18 A Correct.  
661:19 Q February 2011?  
661:20 A Correct.  
662:11 Q Okay. So let's talk about .79.  
662:12 A Yes.  
662:13 Q I thought we'd covered this yesterday,  
662:14 but now I'm not so sure. Numerator, what's the  
662:15 time period of advertising?  
662:16 A The time period in the advertising would  
662:17 be the advertising spend in 2011.  
662:18 Q Okay. And the denominator would be the  
662:19 new recurring revenue that was traced or resulted  
662:20 from the 2011 advertising, correct?  
662:21 A Yes.  
662:22 Q Okay. And that is different from the  
662:23 methodology you used for the first offering  
662:24 memorandum, correct?  
662:25 A Correct. Because --  
663:1 Q Can you -- and I just -- can I just hold  
663:2 you to "Correct" --  
663:3 A Okay.

110. Winkelmann agreed that there was no disclosure in the second offering memorandum that BOP had changed methodologies for calculating the advertising ratio. Winkelmann agreed that investors who purchased royalty units in the first round – including his clients the Grossmans and Mr. Mahoney – would not have been able to discern that BOP had switched methodologies.

663:5 And there is no mention in this offering  
663:6 memorandum, the second offering memorandum, that  
663:7 you had switched methods, correct?  
663:8 A No.  
663:9 Q You do say that you switched methods?  
663:10 A No, there's no mention of how the factor  
663:11 was determined in this offering.  
663:12 Q Okay. So do you know who the Grossmans

663:13 are?  
663:14 A Dan and Gail, yes.  
663:15 Q Are they -- are they your clients?  
663:16 A No.  
663:17 Q But they are investors in the first round  
663:18 Royalty Units?  
663:19 A Correct.  
663:20 Q And the second round Royalty Units?  
663:21 A I'll take your word for it.  
663:22 Q Okay. And same with Mr. Mahoney who was  
663:23 your client, right?  
663:24 A Yes.  
663:25 Q He invested in both rounds?  
664:1 A Yes.  
664:2 Q And he's also your kin through marriage?  
664:3 A Yes.  
664:4 Q Okay. And based on just reading the  
664:5 first through the second memorandum, neither the  
664:6 Grossmans or Mr. Mahoney would have known that  
664:7 there was a change in methodology because you  
664:8 didn't disclose it, correct?  
664:9 A I didn't disclose the methodology in  
664:10 either memo.  
664:11 Q Right. But there would -- anyone reading  
664:12 both the first and second memorandum could not have  
664:13 been able to tell there was a switch in  
664:14 methodology, correct?  
664:21 THE WITNESS: That's correct.

111. Winkelmann offered no explanation for how BOP arrived at the 0.79 advertising ratio for 2011 in his investigative testimony, prehearing brief, or expert report.

664:23 Q And when asked at your investigative  
664:24 testimony about how you got to the .79 figure for  
664:25 2011, you said you did not know what the basis was  
665:1 for that figure, correct?  
665:2 A That's what I remember that -- on that  
665:3 day, correct.  
665:4 Q And in order to figure out the 2011  
665:5 ratio, you had at least a whole year's history to  
665:6 determine -- history of advertising to determine  
665:7 what the factor was, correct?  
665:8 A Correct.  
665:9 Q And neither your pre-hearing brief nor  
665:10 your expert report, which were filed in the past

665:11 two weeks, makes any explanation for where the .79  
665:12 number came from, correct?  
665:13 A Not to my knowledge.

112. At trial, Winkelmann did not introduce any exhibits or offer any testimony purporting to show how BOP arrived at a 0.78 or 0.79 advertising ratio for 2011.

113. Regarding the "current" factor of 0.62 disclosed in the second memorandum, Winkelmann's prehearing brief claims that this number was calculated using a six-month look-back.

1467:16 Q In your pre-hearing brief your lawyers  
1467:17 when they talked about the current factor cited in  
1467:18 the second offering memorandum, your lawyers said  
1467:19 that factor was based on a six-month lookback. Do  
1467:20 you remember that?

1467:21 A Can you pull it up, let me see what it  
1467:22 says?

1467:23 Q Yeah. And that's the pre-hearing brief,  
1467:24 page nine. It's page 14 of the PDF. Third  
1467:25 paragraph. You see how it's talking about round  
1468:1 two at the top. And it says, "This time the firm  
1468:2 had considerably more data from which to draw. It  
1468:3 was able to look back over the prior six months to  
1468:4 review the historical efficiency, i.e. the ad  
1468:5 factor."

1468:6 Do you remember that?

1468:7 A Yes.

114. BOP additionally represented in the second offering memorandum: "the key business driver will be the ability of management to persistently convert advertising spending to new clients and new recurring revenues at a factor of less than 0.80. Higher conversion ratios will cause the payback period to be drawn out, thus lowering investor returns." (RX-002, BO 9412). Winkelmann agreed that BOP did not disclose to second round investors that in the first offering memorandum, BOP had represented that the key driver to its business was keeping the advertising ratio below 0.4.

676:16 Q And if the ratio was going to be above  
676:17 .8, any reasonable investor would want to know that  
676:18 fact, right?  
676:19 A Okay. I'll agree with you.  
676:20 Q And that number, .8, you've doubled the  
676:21 number that was in the first round offering. In  
676:22 the first round offering you said the key driver is  
676:23 converting at a factor of .4. Do you see that --  
676:24 or do you remember that?  
676:25 A Yes.  
677:1 Q And you didn't tell investors that you  
677:2 changed that number from the first to the second  
677:3 offering and doubled it to a higher factor; am I  
677:4 correct?  
677:5 A Which investors?  
677:6 Q Any investors.  
677:7 A From which round?  
677:8 Q Well, did you tell anybody in connection  
677:9 with the second round offering --  
677:10 A Okay.  
677:11 Q -- that, "Oh, by the way, I used to be  
677:12 telling people a factor above .4 is trouble, but  
677:13 now I'm telling you a factor above .8 is trouble."  
677:14 Did you tell that to anyone?  
677:15 A No.

115. The second offering memoranda contained a table showing how long it would take for investors to be paid back, depending on the percentage of monthly receipts paid by BOP. (RX-002, BO 9401). That table reflected that if the payment percentage was kept at the minimum 0.25%, it would take 128 months for investors to be repaid, while they would be repaid in 44 months if BOP paid them 1.50% of monthly receipts. (*Id.*) Below the table, the second offering memorandum stated: "Once recurring sustainable profitability is achieved, larger and larger portions of the cash receipts will be used to pay back the Royalty Unit holders." (*Id.*) Later in the memorandum, BOP represents: "Investors should expect the minimum of (0.25%) of total revenue initially. Once Blue Ocean Portfolio achieves profitability, the current

plan (although not required) is to pay at least 50% of the profits, which we expect will exceed 0.25% of revenue..." (RX-002, BO 9411).

116. Another table in the second offering memorandum showed payback timeframes based on the advertising factor (ranging from 0.50 to 0.90) and the monthly payment percentage of BOP's revenues (ranging from 0.25% to 1.50%). (RX-002, BO 9412). Payout times based on the minimum payment percentage ranged from 108 to 132 months, while payout times based on a 1.50% ranged from 39 to 46 months. (*Id.*). Winkelmann agreed that an investor would be unable to calculate their payout time for advertising ratios greater than 0.9.

674:16 Q And if an investor wanted to figure out  
674:17 what their payback was going to be with a factor  
674:18 higher than .9 they couldn't even do it, right?

674:19 A That's correct.

674:20 Q And you're telling investors that at the  
674:21 minimum payout with a .9 advertising factor it's  
674:22 going to be 11 years before they get paid back?

674:23 A That was the purpose of this lookup  
674:24 table, yes.

674:25 Q And that would not have been a good deal  
675:1 for the investors.

675:2 A Again, it depends.

675:3 Q And the spread between payback at a .5  
675:4 factor and a payback at a .9 factor, that's 24  
675:5 months, if my math is right?

675:6 No, Byron, 108 and 132.

675:7 That's the difference in payback time  
675:8 between a factor of .5 and .9?

675:9 A That's what this lookup table attempted  
675:10 to depict, yes.

675:11 Q So if an investor was reading this, they  
675:12 would see that based on whether the factor is .5 or  
675:13 it's .9 that's a two-year difference in payback?

675:14 A Correct.

117. The second offering memorandum represents: "Blue Ocean Portfolios is planning to use the proceeds of the Royalty Offering to expand its advertising reach, syndicate its sponsorship of *The Financial Coach Show* radio program to other smaller markets in the 150

mile radius of St. Louis, improve the creative aspects of the advertising message, and pay for general and administrative expenses. Proceeds could also be used to fund other revenue-producing activities that are directly or indirectly related to Blue Ocean Portfolios' business activities. Any of these activities would need to result in the potential for recurring revenues inuring to Blue Ocean Portfolios and to investor returns." (RX-002, BO 9401-02).

118. The second offering memorandum represents that "the concept of capitalizing the business with a Royalty method would appear to be the most compelling way for the Investors, owners, and employees to align their interests" and that BOP "creates value for its clients by eliminating conflicts of interest..." (RX-002, BO 9401, 9404). The memorandum further represents: "The expansion capital in the form of Royalty Units is the optimal way to fund growth...and align all interests for the highest potential return at the least risk." (RX-002, BO 9417). The second memorandum does not disclose that Winkelmann or Binkholder would receive any compensation increases, or otherwise disclose any conflict of interest. (RX-002).

668:24 And so while you don't disclose any pay  
668:25 raises, you do say that "Blue Ocean Portfolios  
669:1 creates value for its clients by eliminating  
669:2 conflicts of interest," correct?  
669:3 A Yes.  
671:8 Q But you do say, "Blue Ocean Portfolios  
671:9 will use a substantial portion of the proceeds of  
671:10 this offering and future cash flows to fund media  
671:11 buy for both Blue Ocean Portfolios and The  
671:12 Financial Coach Show."  
671:13 Do you see that?  
671:14 A Yes.  
671:15 Q Again, no mention of the pay increases  
671:16 for you or Mr. Binkholder, correct?  
671:17 A No.  
671:18 Q Correct or incorrect?  
671:19 A That's correct.

119. In the "Advertising, Sales and Marketing Plan" section, the second offering memorandum discusses BOP's sponsorship of Binkholder's radio. (RX-002, BO 9405). The memorandum also represents that BOP "will use a substantial portion of the proceeds of this offering and future cash flows to fund media buy for both Blue Ocean Portfolios and The Financial Coach Show." (RX-002, 9407). There is no disclosure in the second memorandum of Binkholder's investment adviser bar.

670:18 Q Can we agree at least that that paragraph  
670:19 on page 10 that discusses Mr. Binkholder says  
670:20 nothing about the Missouri investment advisor bar  
670:21 order that had been entered against him, correct?  
670:22 A Yes, we'll agree with that.

120. The second offering memorandum represented: "**Number of Units Issued**; the fewer number of units issued, the better for owners and employees." (RX-002, BO 9411).

121. On April 23, 2012, Winkelmann sent identical emails to the royalty unit investors. (See, e.g., Exs. 129, 130, 131, 132). In those emails, Winkelmann wrote that BOP "should again exceed our projections," followed by positive projections of BOP's AUM and revenue growth. (*Id.*). In the emails, Winkelmann apprised the investors that BOP was "planning another raise in royalty units in May (Round 3) for a potential new Blue Ocean branch office in Chicago." (*Id.*). The emails continue: "The majority of the proceeds are used to fund our advertising campaign which is a key component to our recurring revenue growth. Please let me know if you would like to review the Royalty Unit Round 3 material when it becomes available." (*Id.*).

677:16 Q And can we go to Exhibit 132. And can  
677:17 you put Exhibit 132 next to Exhibit 130. And  
677:18 Exhibit 132, that's an email from Mr. -- from -- on  
677:19 behalf of you to Carolyn Gamache?  
677:20 A Yes.  
677:21 Q And then Exhibit 130, that's an email on  
677:22 behalf of you to Mike Ursh?  
677:23 A Yes.

677:24 Q And just put them side by side, Byron,  
677:25 and if you need to take the top parts down, if you  
678:1 will.

678:2 Can we agree that -- and take as much  
678:3 time as you like. That the text of the email are  
678:4 identical?

678:5 A Every Royalty Unit holder at that time  
678:6 would have gotten this identical communication from  
678:7 me.

678:8 Q Okay. And when you say "from you," you  
678:9 actually -- it's sent on behalf of you, but you  
678:10 wrote it, right?

678:11 A Correct.

122. On August 1, 2012, Winkelmann emailed his advisory client Mark Funfsinn, and asked if Funfsinn would like to review the upcoming third round royalty unit offering. (Ex. 167). Winkelmann wrote: "Similar units issued last year have paid back the outside investors \$4,961.95 so far." (*Id.*). Winkelmann conceded that this statement was false, and that first round investors had only been repaid \$2,671.98 at the time of his email to Mr. Funfsinn. Winkelmann could also not explain why he had falsely represented the amount first round investors had been repaid.

682:3 Q And you say, "Similar units issued last  
682:4 year have paid back the outside investors  
682:5 \$4,961.95."

682:6 That's what you tell him, right?

682:7 A That's what it says, yes.

682:8 Q And that was false?

682:9 A Yes, I later learned that there was some  
682:10 error that was pulled off some point of data, which  
682:11 I unfortunately, Judge, I cannot recollect where I  
682:12 got that from because it's a mystery why it would  
682:13 be so precise, but I can't find where it came from.  
682:14 Obviously it was an error.

682:15 Q Okay. Because, and I think we're all in  
682:16 agreement the number is wrong, because in reality a  
682:17 similar unit issued at the start of the first  
682:18 offering would have only paid back \$2,671.98 at the  
682:19 time of your email to Mr. Mark, correct?

682:20 A That's correct. So I thought maybe this

682:21 - was a dupe or a 2X mistake, but I cannot find where  
682:22 that mistake came from.

### **The Third Round Offering**

123. On August 9, 2012, Jennifer Elbert (Juris) emailed Winkelmann about the third round royalty unit offering materials. (Ex. 169). Elbert wrote: "Exhibits should all be updated to reflect round 3 figures and/or updated versions of documents. The executive summary is saved in there as well. The only thing that needs to be updated on that is the 'factor' number used throughout the document. It references .62 and .51. The Acquisition Cost photo you have included shows .64 as the factor for May and .51 for June. We just need to be consistent on whatever number we use in the document." (Ex. 169).

683:13 A I guess. Yeah. I don't know.

683:14 Q Okay. And Ms. Elbert writes, "I have all  
683:15 the exhibits saved in a file (it's not zipped yet)  
683:16 in Dropbox. Exhibits should all be updated to  
683:17 reflect round three figures and/or updated versions  
683:18 of documents. The executive summary is saved in  
683:19 there as well."

683:20 And she's talking about the third round  
683:21 offering memorandum, right?

683:22 A Yes.

124. On August 24, 2012, Winkelmann wrote identical emails that were sent to each of the royalty unit investors. (Ex. 172). Those emails depicted BOP's growing assets under management, and apprised investors of the upcoming third round royalty unit offering: "Please let me know right away if you are interested in participating in this [third] round as we have *many* prospective investors and will give preference to the current royalty holders." (Ex. 172) (emphasis added). In reality BOP would only be able to issue third round royalty units to four investors.

685:14 Q Can we go to Exhibit 172, please. And  
685:15 Exhibit 172 is an email sent on your behalf to  
685:16 Barking Dogs LLC?

685:17 A Yes.  
685:18 Q And Barking Dogs LLC, that's Bryan Swift?  
685:19 A Yes.  
685:20 Q And is Bryan Swift a client?  
685:21 A He's a close friend and client, yes.  
685:22 Q Okay. Is he the guy you sold the hockey  
685:23 stick to?  
685:24 A I think it might have been a squash  
685:25 racket.  
686:1 Q A squash racket. Because he's a squash  
686:2 player, right?  
686:3 A I think he's a former squash player like  
686:4 myself.  
686:5 Q Okay. Okay. And, well, so even though  
686:6 the email was sent on behalf of you from Ms.  
686:7 Hennessy's email address, you wrote the email,  
686:8 right?  
686:9 A Again, that email would have been sent to  
686:10 all the investors at that point.  
688:18 Q And you're telling your investors we have  
688:19 many prospective investors lined up, right?  
688:20 A Correct.  
688:21 Q In reality you only were able to sell to  
688:22 four investors in the whole third round offering,  
688:23 right?  
688:24 A Yes.

125. Despite having serious health issues at the time, Winkelmann decided to proceed with the third round offering in September 2012.

689:6 THE WITNESS: I had been on life support  
689:7 in May and the breathing tube caused a callus on my  
689:8 larynx and I was losing my voice rapidly. They  
689:9 also had complications with the insertion of the  
689:10 vena cava filter that they inserted because of my  
689:11 blood clot that I developed, and I had a  
689:12 hemorrhage -- this remarkable hemorrhage in my  
689:13 stomach, and that's why I was on life support in  
689:14 May.

689:15 I was urinating massive amounts of blood,  
689:16 and short -- I think it was September or early  
689:17 October I was diagnosed with prostate cancer and I  
689:18 really couldn't talk. And my family, my doctor  
689:19 said, "Jim, you've got to focus on your health."  
689:20 And a lot of life happened at that point in time

689:21 that took me out of my regular rhythm, my regular  
689:22 business rhythm.

690:19 Q And you started circulating this  
690:20 memorandum in September 2012?

690:21 A Yes.

690:22 Q And let's go to -- can I just ask a  
690:23 question? Did you finalize this memorandum before  
690:24 all these -- the health problems and the like  
690:25 started?

691:1 A It was finalized September 1st and my  
691:2 health issues were rapidly deteriorated in the  
691:3 month of September and October.

691:4 Q Okay. But at the time you put the memo  
691:5 out, were you going through some of the --  
691:6 already -- the difficulties you just described?

691:7 A There were the onset of the prostate  
691:8 issues and my wife's problems.

691:9 Q And I don't want to make light of your  
691:10 health issues because it sounds very serious.

691:11 A I don't --

691:12 Q But you nevertheless decided to start  
691:13 offering the third round unit to investors in  
691:14 September 2012, right?

691:15 A September 1st, this all went to the  
691:16 printer which happens to be Bryan Swift's company  
691:17 to print them, and the -- I think shortly  
691:18 thereafter they were distributed to the people who  
691:19 had indicated interest.

691:20 Q And you were the one that okayed the  
691:21 distribution of the third round memo?

691:22 A Correct, correct.

126. In the third round offering memorandum, dated September 1, 2012, BOP represents: "The key driver to the Blue Ocean Portfolios model is the efficacy, or yield, of the money spent on advertising...The key indicator on the advertising efficacy is to determine how much advertising is needed to generate one additional dollar in new recurring revenue; currently this 'factor' is 0.67. Or in other words, Blue Ocean Portfolios spends \$0.67 in advertising to buy \$1.00 in new recurring annual revenue." (RX-003, BO 7487). Winkelmann testified that the factor would be different depending on the current month used to calculate the factor.

693:7 Q The factor at any given time was very  
693:8 fluid, right?  
693:9 A Correct.  
693:10 Q It was always changing?  
693:11 A You could take a snapshot on any day, but  
693:12 even that snapshot from September 1st may have  
693:13 changed as more business would be attributed to the  
693:14 advertising spends.  
693:15 Q Right. So the factor -- if you took the  
693:16 snapshot on September 1st, it could actually be  
693:17 very different than the snapshot on October 1st,  
693:18 right?  
693:19 A Correct.

127. Winkelmann testified that the methodology used to calculate the advertising ratio was different in the first and third memoranda. He agreed that the third memorandum does not disclose any change in methodology. The third memorandum also failed to disclose that the advertising ratio could differ based on the particular "snapshot" in time used to calculate the factor.

695:8 Q I think you said about an hour ago that  
695:9 the methodology for offering one and offering two  
695:10 were different?  
695:11 A I said the calculus is the same but  
695:12 the -- the way we attributed the revenue was  
695:13 different.  
695:14 Q Right. And you also agreed with me that  
695:15 that was not disclosed in the second offering  
695:16 memorandum, right?  
695:17 A That's correct.  
695:18 Q So the way you attributed the revenue was  
695:19 also different between the first memorandum and the  
695:20 third memorandum?  
695:21 A Correct.  
695:22 Q Okay. And you do not say that in the  
695:23 third memorandum, correct?  
695:24 A That's correct.  
695:25 Q And you also don't say in the third  
696:1 memorandum that Blue Ocean Portfolios is using this  
696:2 new revised process that is evolved from offering  
696:3 two, correct?  
696:4 A In round three the offering memorandum

696:5 would have more elaborate charts and more data that  
696:6 we had. We wouldn't have had in round two or one.

696:7 Q But there's no description of any sort of  
696:8 process or calculation change in the third round  
696:9 offering memorandum, correct?

696:10 A And I'm -- that's correct.

697:7 Q And what you just said how whenever the  
697:8 concept of snapshots, of how the snapshot in  
697:9 September can lead to a wildly different factor  
697:10 than a snapshot in October, that concept is not  
697:11 discussed in the third round offering memorandum,  
697:12 correct?

697:13 A I never used the word "wildly." It would  
697:14 naturally be different because we just don't know  
697:15 what it's going to be October 1st.

697:16 Q Is there any disclosure in the third  
697:17 round memorandum that the factor can differ based  
697:18 on the particular snapshot of when the factor is  
697:19 calculated?

697:20 A No, no.

705:25 Q So far in 2012, this factor has dropped  
706:1 to 0.67?

706:2 A Correct.

706:3 Q And, again, no mention that this 0.67  
706:4 factor is the result of some snapshot, correct?

706:5 A Well, as of September 1st that's where it  
706:6 is.

706:7 Q All right. But you just agreed with me  
706:8 20 minutes ago that in this whole memorandum no  
706:9 mention of snapshots, right?

706:10 A Well, the snapshot would have been  
706:11 September 1st, the date of the document.

706:12 Q But you don't tell investors how you  
706:13 got -- whether there either was a snapshot or how  
706:14 you made it, correct?

706:15 A Correct.

128. Later in the third memorandum, BOP represents: "The key business driver for Blue Ocean Portfolios is the client acquisition cost. Currently, Blue Ocean Portfolios is spending approximately \$15,000 per month on advertising which generates leads for the sales staff to follow up on. This \$15,000 advertising spend is converting to approximately \$2.8 million in new assets that are generating \$31,000 in new annual recurring revenue. So each \$10,000 in new

recurring revenue is currently costing Blue Ocean Portfolios \$6,700 in advertising - a 67 /100 ratio or an 'advertising conversion factor' of 0.67." (RX-003, BO 7495). Winkelmann agreed that this section contained inconsistencies, given that \$15,000 divided by \$31,000 equals 0.48, as opposed to .67.

703:1 Q What's 15,000 divided by 31,000?  
703:2 A Let me do that again. 15,000 divided by  
703:3 31,000. .48.  
703:4 Q .48. Factor of .48?  
703:5 A Uh-huh.  
703:6 Q And so the next sentence reads, "So each  
703:7 \$10,000 in new recurring revenue is currently  
703:8 costing Blue Ocean Portfolios \$67,000 in  
703:9 advertising, a 67/100 ratio or an advertising  
703:10 conversion factor of .67."  
703:11 Do you see that?  
703:12 A Yes.  
703:13 Q And we all agree .67 does not equal .48?  
703:14 A Obviously the offering memorandum is  
703:15 understating the advertising efficacy from the  
703:16 previous lines.  
703:17 Q And this is less than a month where  
703:18 Ms. -- after Ms. Elbert, your advertising factor  
703:19 person, sends you an email saying, "Look out.  
703:20 There are inconsistencies in the memo regarding the  
703:21 advertising factor."  
703:22 Do you see that?  
703:23 A Yes.

129. Unlike the first two offerings, where the minimum monthly payout percentage was 0.25%, for the third round offering the minimum percentage was 0.1%. (RX-003, BO 7488). The third offering memorandum contained a chart showing the payback times ranging from 133 months for the minimum payout percentage, to 22 months for a 0.85% payout percentage. (*Id.*). Beneath that chart, the third memorandum represented: "Once recurring, sustainable profitability is achieved, larger and larger portions of the cash receipts will be used to pay back the Royalty Unit holders." (*Id.*).

130. The third round memoranda represents: "Blue Ocean Portfolios is planning to use the proceeds of the Royalty Offering to expand into the Chicago market, increase its advertising reach, syndicate its sponsorship of *The Financial Coach Show* radio program...and pay for general and administrative expenses. Proceeds could also be used to fund other revenue-producing activities that are directly or indirectly related to Blue Ocean Portfolios' business activities. Any of these activities would need to result in the potential for recurring revenues inuring to Blue Ocean Portfolios and to investor returns." (RX-003, BO 7488-89). The third memorandum does not disclose that proceeds would be used to support compensation increases for Winkelmann or Binkholder.

699:25 Q And what you're telling investors there  
700:1 is that if Blue Ocean is going to deploy the  
700:2 proceeds of offering three, any of those  
700:3 deployments of proceeds would need to result in the  
700:4 potential for the recurring revenues going up,  
700:5 right?

700:6 A Yes.

700:7 Q No mention of the proceeds of this  
700:8 offering increasing your compensation or Mr.  
700:9 Binkholder's compensation, correct?

700:10 A No.

700:11 Q Incorrect?

700:12 A No mention, correct. I'm sorry.

700:13 Q And raising your compensation, that  
700:14 doesn't lead to increased payouts for investors,  
700:15 correct?

700:16 A No.

700:17 Q Incorrect?

700:18 A The investors -- the investors' payback  
700:19 is tied to the cash receipts of the company, not to  
700:20 my compensation.

700:21 Q Right, but you said -- you just agreed  
700:22 with me if you're going to employ the proceeds of  
700:23 this offering it needs to result in investor  
700:24 payments going up. You just agreed with me.

700:25 A Yes, I agree with that.

701:1 Q Paying you, that doesn't lead to investor  
701:2 payments going up, correct?

701:3 A That's correct.

131. As in the previous offering memoranda, the "Advertising, Sales and Marketing Plan" section contains a description of BOP's sponsorship of Binkholder's radio show. (RX-003, BO 7491-92). The third offering memorandum does not disclose Binkholder's investment adviser bar order.

701:6 The first two paragraphs, please.

701:7 Again, this is similar to the advertising

701:8 sales and marketing plan description, The Financial

701:9 Coach Show from the second memorandum, correct?

701:10 A Correct.

701:11 Q No mention of Mr. Binkholder's Missouri

701:12 investment advisor bar?

701:13 A No. No mention.

132. Similar to the second offering memorandum, the third memorandum represented: "the fewer number of units issued, the better for owners and employees." (RX-003, BO 7497). Also similar to the second memorandum, the third memorandum represented: "**Advertising Yield Factor:** this is the key driver of the Blue Ocean Portfolios model. This advertising factor for 2011 was 0.78." (*Id.*)

133. The third round memorandum represented: (a) "Blue Ocean Portfolios creates value for its clients by eliminating conflicts of interest"; (b) "the concept of capitalizing the business with a Royalty method would appear to be the most compelling way for the investors, owners, and employees to align their interests"; and (c) "The expansion of capital in the form of Royalty Units is the optimal way to fund growth...and align all interests for the highest potential return at the least risk." (RX-003, BO 7488, 7490, 7504-05). The third memorandum does not disclose any conflicts of interest. (RX-003).

134. The third memorandum represented: "Investors should expect a low (0.10%) rate of total revenue per unit initially. Once Blue Ocean Portfolio achieves profitability, the plan is to

pay at least 50% of the profits to the Royalty Unit holders until their 2.25x payback is achieved.

Investors should expect the bulk of their return in years 3-5." (RX-003, BO 7498).

708:11 Q And then the top row that's the factor

708:12 going from .5 to .9?

708:13 A Correct.

708:14 Q And under the numbers you're showing the

708:15 investors, can they get paid back in three to five

708:16 years with the .10 payback?

708:17 A No.

708:18 Q And can they get paid back in three to

708:19 five years with the .25 payback?

708:20 A No.

708:21 Q And can they figure out how long it's

708:22 going to take them to get paid back if the factor

708:23 is over .9?

708:24 A No.

135. The third memorandum contained a table showing payout timelines based on the advertising ratio (ranging from 0.50 to 0.90) and monthly payback percentage (ranging from 0.10% to 0.85%). (RX-003, BO 7499). The chart reflected that in order to get paid back in three to five years, BOP would have to use a monthly payout percentage greater than 0.25% (more than twice the minimum percentage). (*Id.*)

136. On October 2, 2012, Winkelmann sent separate emails to each royalty unit investor, and asked them if they were interested in investing in the third round royalty units. (*See, e.g.* Ex. 197, p. 2; Ex. 198, p. 2; Ex. 199, p. 2 ("Please let me know if you would be interested in seeing the round 3 offering or if you know of anyone interested in participating in our growth going forward - the units are \$25,000 each.")). In those emails, Winkelmann falsely stated that BOP had raised \$325,000 in the third offering. (Ex. 197, p. 2; Ex. 198, p. 1; Ex. 199, p. 2 ("...our 3<sup>rd</sup> round of financing is currently being placed. So far we have brought in \$325,000 of the \$650,000 that we have planned.")). In reality, BOP had only raised \$250,000 at

the time of Winkelmann's email, and would only raise \$275,000 for the entire third round. (Ex. 455).

711:12 Q And let's go to Exhibit 199, the bottom  
711:13 email, please. That's an email from you to Mr.  
711:14 Zenner.

711:15 A Yes.

711:16 Q First round Royalty Unit investor, but  
711:17 not a client, right?

711:18 A Yes.

711:19 Q You're showing him the growing assets  
711:20 under management?

711:21 A Yes.

711:22 Q Next page, please. Can you just blow  
711:23 everything up?

711:24 And this is the exact same email that you  
711:25 wrote to Mr. Buckowitz, right?

712:1 A I would represent that every investor got  
712:2 the same email about that same time.

712:3 Q So you told every investor that as of  
712:4 October 2nd, 2012, Blue Ocean Portfolios had  
712:5 brought in \$325,000 in the third offering, correct?

712:6 A That was my belief at that point, yes.

137. On October 9, 2012, Winkelmann wrote a letter to William Jennings, which he sent to Mr. Jennings along with the third round offering materials. (Ex. 203). In that letter, Winkelmann falsely represented that BOP had raised \$400,000 in the third offering. (Ex. 203 ("It would be great if you would like to participate. If not, that is OK as well. We have raised \$400,000 out of the \$650,000 so far.")). In reality, BOP had only raised \$250,000 at the time of Winkelmann's email, and would only raise \$275,000 for the entire third round. (Ex. 455).

713:15 Q Thank you. Exhibit 203, please.

713:16 This is a -- an unsigned letter from you  
713:17 to a Mr. William Jennings where you say, "Enclosed  
713:18 are business plan and offering memorandum to raise  
713:19 an additional \$650,000."

713:20 And you actually did meet with Mr.

713:21 Jennings on October 9th, 2012, is that correct, or  
713:22 you spoke with him?

713:23 A I think he came by the office because I

713:24 remember I was having a lot of trouble  
713:25 communicating with my voice. That's the best of my  
714:1 recollection today.  
714:2 Q But you actually did send out this  
714:3 letter -- a signed version of this letter when you  
714:4 sent him an offering memorandum for the third round  
714:5 offering?  
714:6 A Yes.

**Binkholder's Criminal Investigation, the Missouri Regulatory Investigation, BOP's Failing Finances, and the Fourth Round Offering.**

138. On November 16, 2012, Winkelmann first learned of the federal criminal investigation into Binkholder. Winkelmann learned this when one of his clients emailed Winkelmann a copy of a grand jury subpoena the client had received. (Ex. 206). At the time Winkelmann, more than a month had passed since the last third round investor had invested, which was the only third round investment since September 2012. (Ex. 455).

715:7 Q Exhibit 206 is the email in which Mr.  
715:8 Riedel emails you a copy of a grand jury subpoena  
715:9 you received, correct?  
715:10 A Correct.  
715:11 Q And we can go to the next page of Exhibit  
715:12 206, next page. There we go. That's the grand  
715:13 jury subpoena?  
715:14 A Yes.  
715:15 Q And that you quickly came to learn stems  
715:16 from a criminal investigation into Bryan  
715:17 Binkholder?  
715:18 A That's the first I learned of it.

139. On December 1, 2012, BOP client and royalty unit investor Ed Mahoney inquired with Winkelmann about the performance of his royalty unit investment. (Ex. 210). At the time of his inquiry, Mahoney had only been repaid \$3,778.54 on his first round investment, and BOP still owed him over \$71,000. (Ex. 210).

716:24 Q Exhibit 210, please. And can you blow up  
716:25 the first maybe -- keep going. Stop.  
717:1 And this is an email from you to Mr.  
717:2 Mahoney?

717:3 A Yes.  
717:4 Q And you write, "I took the time to review  
717:5 your investment results in the Blue Ocean Royalty  
717:6 Units."  
717:7 A Yes.  
717:8 Q And you were doing that because Mr.  
717:9 Mahoney had inquired about the performance of his  
717:10 Royalty Units?  
717:11 A It was -- is there another document that  
717:12 this is responding to?  
717:13 Q Can you keep going down, Byron? Can you  
717:14 show him the end of it? I'm not sure. Can you go  
717:15 to the next page? I actually think that is it. Can  
717:16 you go to the start, please?  
717:17 A Okay.  
717:18 Q So --  
717:19 A It was responding to either a verbal or  
717:20 written inquiry.  
717:21 Q Into the performance of the Royalty  
717:22 Units?  
717:23 A Correct.  
717:24 Q And Mr. Mahoney was a first round  
717:25 investor and a second round investor, right?  
718:1 A Correct.  
718:2 Q And it -- and he was also a client?  
718:3 A Correct.  
718:4 Q And also a family member of yours?  
718:5 A Correct.  
718:6 Q And let's see. So this is -- this is  
718:7 right around the time of the -- like, this is a  
718:8 week or two -- two weeks after you found out about  
718:9 Binkholder, right?  
718:10 A Correct.  
718:11 Q And it looks like for the first round  
718:12 offering, he has been paid back seven -- \$3,778.54?  
718:13 A Yes.  
718:14 Q And you still owe him over \$71,000?  
718:15 A On the royalty deal, yes.

140. In addition to inquiring about the status of his royalty unit investment, Mr. Mahoney inquired about finding another person to buy his royalty units. In response to Mahoney's inquiry, Winkelmann wrote: "I want to emphasize that there is no market for the royalty units that you purchased in your IRA. However if you would like I would attempt to find

a buyer for your existing units - of course there would be no guarantee that I could find a buyer or that the terms would be favorable to you. I have no way of knowing what the offer would be and would only be in a position to convey to you the terms of any offer- if and only if an offer would surface." (Ex. 210, BO 3578).

718:24 And you write, "I want to emphasize that  
718:25 there is no market for the Royalty Units that you  
719:1 purchased in your IRA. However, if you would like,  
719:2 I would attempt to find a buyer for your existing  
719:3 units."

719:4 Do you see that?

719:5 A Yes.

719:6 Q And you wrote this because Mr. Mahoney  
719:7 had reached out to you about trying to sell his  
719:8 Royalty Units?

719:9 A He asked me if there was -- if I remember  
719:10 correctly, he asked me how he would sell them if he  
719:11 wanted to dispose of them.

719:12 Q Right. He asked you how he could go  
719:13 about disposing the Royalty Unit if he wanted to  
719:14 dispose of it, right?

719:15 A Correct.

719:16 Q And you're telling him there's no  
719:17 guarantee you could find a buyer or on terms  
719:18 favorable to you, right?

719:19 A Correct.

719:20 Q But at least you're making the offer that  
719:21 I can go out and try and find a buyer for you,  
719:22 right?

719:23 A Correct.

141. Even though Mr. Mahoney's royalty unit had better payout terms (3x payout and a warrant) than the 2.5x payout of the fourth offering, Winkelmann did not inform the fourth round royalty unit investors – BOP clients Bryan Swift and Dr. Gamache – that Mr. Mahoney had inquired about selling his royalty unit.

721:16 Q You had prospective buyers, right?  
721:17 Shepard or Bryan Swift bought it, right? He bought  
721:18 a fourth round unit and he was a client of yours,  
721:19 right?

721:20 A Who?  
721:21 Q Mr. Bryan Swift.  
721:22 A Yes.  
721:23 Q You owed him fiduciary duties to always  
721:24 act in his best interest, right?  
721:25 A In his accounts that we manage, of  
722:1 course.  
722:2 Q So you could have said, "Mr. Swift,  
722:3 fourth round, it's 2.25 percent, but I got you  
722:4 another guy, a family member of mine, who's trying  
722:5 to unload his three times payback unit and you  
722:6 could have that instead."  
722:7 But you didn't do it, did you?  
722:8 A I just have a flat problem with your  
722:9 hypothetical.  
722:10 Q But did you do that? Did you tell Mr.  
722:11 Swift that he could take Mr. Mahoney's unit instead  
722:12 of a fourth round unit?  
722:13 A At what valuation?  
722:14 Q Did you offer --  
722:15 A No.  
722:16 Q Okay.  
722:17 A I didn't have it to offer.  
722:18 Q Of course you didn't. And who was the  
722:19 other fourth round investor, Ms. Gamache?  
722:20 A Dr. Gamache.  
722:21 Q Dr. Gamache. She was a client too?  
722:22 A Yes.  
722:23 Q You owed her fiduciary duties?  
722:24 A Yes.  
722:25 Q And you sold -- you issued her a fourth  
723:1 round Royalty Unit?  
723:2 A Yes.  
723:3 Q You could have issued -- you could have  
723:4 said, "Dr. Gamache, don't waste your money on that  
723:5 2.25 payout. I got the 3.0 payout plus a warrant  
723:6 for my family member who's looking to sell."  
723:7 You did not say that to Dr. Gamache, did  
723:8 you?  
723:9 A No, because I didn't have it to sell. Ed  
723:10 Mahoney had his units. It wasn't under my control.  
724:14 You don't do it because if you -- if you  
724:15 sell Mr. Mahoney's unit to Mr. Swift or Ms. Gamache  
724:16 you don't get any money, but if you sell Mr. Swift  
724:17 or Ms. Gamache these round four Royalty Units you  
724:18 get paid, right?

724:19 A I don't know how to address the  
724:20 hypothetical you set up. Mr. Mahoney never asked  
724:21 me to find him a buyer. I sent him -- I addressed  
724:22 his concern. I laid it out. Let me know if you  
724:23 want me to -- best efforts, I'll try to find him a  
724:24 buyer.  
724:25 Q But you didn't use any best efforts to  
725:1 find him a buyer?  
725:2 A He didn't ask me to.

142. On December 12, 2012, Winkelmann sent an email to Bryan Swift attaching BOP's financial projections for 2013. (Ex. 211). Those projections showed BOP running out of money by February 2013. (Ex. 211, BO 54). Winkelmann wrote in his email: "I need to come up with a deal -- I am hesitate to go back to some of the investor/clients with this bad news -- need to be careful not to start any rumors." (Ex. 211, BO 52). Winkelmann testified that he did not want to inform the royalty unit investors, including his advisory clients, that BOP would soon be out of money.

725:22 Q And the bad news that you were talking  
725:23 about was that Blue Ocean Portfolios' current  
725:24 financial situation was much worse than your  
725:25 original projections, right?  
726:1 A Because of the suspension of round three,  
726:2 yes.  
727:16 Q And under "The Current Situation," Blue  
727:17 Ocean Portfolios has run out of money by the end of  
727:18 February --  
727:19 A Correct.  
727:20 Q -- 2013.  
727:21 A Correct.  
728:1 Q This is the bad news that you didn't --  
728:2 this is the bad news that you didn't want to go  
728:3 back and tell the Royalty Unit holder investor --  
728:4 investors, correct?  
728:5 A Yes, this is the bad news.  
728:6 Q You didn't want to tell the Royalty Unit  
728:7 holders that Blue Ocean was going to be out of  
728:8 money in a couple months, right?  
728:9 A On the original capitalization plan, that  
728:10 would have -- that's correct.

728:11 Q And you didn't want to tell this to the  
728:12 investors, the Royalty Units who were also your  
728:13 advisory clients, right?  
728:14 A Of course.

143. Winkelmann agreed that Bryan Swift was different than the other royalty unit investors in that Swift was provided access to important information about BOP that the other investors were not.

731:24 Q He's in a different situation than the  
731:25 other Royalty Unit investors, correct?  
732:1 A Different situation? No, he's in the  
732:2 same situation.  
732:3 Q Right. But he has access to significant  
732:4 important information about your company that the  
732:5 other investors don't, correct?  
732:6 A Because he also has access to significant  
732:7 capital that these other investors don't.  
732:8 Q Right. Can you just agree, Mr. Bryan  
732:9 Swift, he is not the same as the other investors in  
732:10 that he has access to much more important  
732:11 information about Blue Ocean Portfolios, correct?  
732:12 A Okay. I'll agree with you there.

144. On December 21, 2012, Winkelmann received a letter from the Missouri Securities Division that Winkelmann, BOP, and Binkholder were under investigation for potential violations of Missouri's securities laws. (Ex. 212).

145. On January 25, 2013, Winkelmann sent Morgan an email with the subject: "Round 4 disclosures." (Ex. 225, BO 3140). Winkelmann wrote: "Mike – we need to raise money. Here is the disclosure that I came up with." (Ex. 225, BO 3141). Winkelmann wrote this because BOP was anticipated to run out of money by the end of February 2013. The email contained draft disclosures, written by Winkelmann, concerning Binkholder's criminal investigation and the Missouri regulatory investigation into Winkelmann and BOP. (*Id.*).

735:23 Q And you write, "Mike, we need to raise  
735:24 money."

735:25 A Correct.  
736:1 Q And that's because Blue Ocean was going  
736:2 to be out of money by the end of February, right?  
736:3 A Correct.  
736:4 Q And you write, "Here's the disclosure  
736:5 that I came up with."  
736:6 A Yes.  
736:7 Q That's a disclosure you wrote, right?  
736:8 A A draft, yeah.

146. On January 28, 2013, Winkelmann wrote Morgan an email with the subject: "Round 4." (Ex. 229). Winkelmann wrote: "Does the calendar and regs allow to shoot to raise \$500,000 over the next two [months]? This would be our final round. I need go ahead and damn the torpedoes! I think the odds are that the state will fine us but not shut us down. If we stop growing we start [dying]." (Ex. 229). Winkelmann testified that he needed to raise money quickly, because BOP had various business expenses to pay and was one month away from being out of money.

737:22 Q And you write, "Mike, does the calendar  
737:23 and regs allow us to shoot to raise \$500,000 over  
737:24 the next two" -- you meant -- meant to say  
737:25 "months," right?  
738:1 A Correct.  
738:14 Q You needed to get that offering going  
738:15 real quick, right?  
738:16 A Yeah, because we had all these employees,  
738:17 advertising commitments, new rents to pay, yeah.  
738:18 Q You were now at this point a month away  
738:19 from being out of money?  
738:20 A Correct.

147. At the time of his email, Winkelmann thought it was more likely than not that BOP would be the subject of an Missouri regulatory enforcement action.

738:21 Q And then you write, "I think the odds are  
738:22 that the State will fine us but not shut us down."  
738:23 Do you see that?  
738:24 A That's what I said that day, yes.  
738:25 Q And "the State," you mean the Missouri

739:1 securities regulators, right?  
739:2 A Correct.  
739:10 Q So you thought it was more likely than  
739:11 not that Blue Ocean Portfolios was going to be hit  
739:12 by an enforcement action by the Missouri securities  
739:13 regulators?  
739:14 A Of course that never happened.  
739:15 Q Do you agree with what I just said?  
739:16 A I agree with what you said, but of course  
739:17 it never happened so I was wrong.

148. By January 30, 2013, Winkelmann was informing prospective investors about the fourth round offering and asking them if they would like to receive offering materials. (Ex. 234 (“We have decided to make another offering...Please let me know if you would like to receive an official offering memo.”))

149. The fourth round offering memorandum, dated February 15, 2013, represented: “The key indicator on the advertising efficacy is to determine how much advertising is needed to generate one additional dollar in new recurring revenue; for the 2012 the factor was 0.89%. Or in other words, Blue Ocean Portfolios spent \$0.89 in advertising to ‘buy’ \$1.00 in new recurring annual revenue. In 2012 Blue Ocean Portfolios Invested approximately \$307,000 in advertising and the AUM increased approximately \$35 million from \$57 million to \$92 million. Resulting recurring revenues increased by approximately \$262,000 to approximately \$725,000 annually.” (RX-004, BO 9134). This paragraph contained conflicting information because \$307,000 divided by \$262,000 results in an advertising ratio of 1.17, not 0.89.

746:13 Q And I'd like you to divide 307,000 by  
746:14 \$262,000.  
746:15 A 1.17.  
746:16 Q And that's a different factor than .89,  
746:17 correct?  
746:18 A Yes, that's different.  
746:19 Q And a factor of 1.17 means that it's  
746:20 costing more in advertising than it is to bring in  
746:21 a year's worth of revenue, right?

746:22 A Recurring revenue.  
746:23 Q Right.  
746:24 A Recurring new revenue.

150. In a later section, the fourth round memorandum represented: "The key business driver for Blue Ocean Portfolios is the client acquisition cost. Currently, Blue Ocean Portfolios is spending approximately \$10,000 per month on advertising which generates leads for the sales staff to follow up on. This \$10,000 advertising spend is converting to approximately \$2.8 million in new assets that are generating \$31,000 in new annual recurring revenue. So each \$10,000 in new recurring revenue is currently costing Blue Ocean Portfolios \$6,700 in advertising- an 89/100 ratio or an 'advertising conversion factor' of 0.89." (RX-004, BO 9141). This paragraph also contained conflicting information, in that \$10,000 divided by \$31,000 results in an advertising ratio of 0.32; while \$6,700 divided by \$10,000 results in a ratio of 0.67. The fourth memorandum does not disclose any discrepancies existing. (RX-004).

752:9 Q And can you pull out the calculator,  
752:10 please?  
752:11 A Here it is.  
752:12 Q 10,000 divided by 31,000.  
752:13 A .32.  
752:14 Q And that's not a factor of .89, correct?  
752:15 A It's the .8. It's much better than  
752:16 what's published here.  
752:25 Q "Each \$10,000 in new recurring revenue is  
753:1 currently costing Blue Ocean Portfolios \$6,700 in  
753:2 advertising," correct?  
753:3 A That's what it says.  
753:4 Q Do you have the calculator, please? 6,700  
753:5 divided by 10,000?  
753:6 A .67.  
753:7 Q And then the very next words are, "an  
753:8 89/100 ratio or an advertising conversion factor of  
753:9 0.89."  
753:10 A That's -- the .89 is understating the  
753:11 actual efficacy of .69 or .67.  
753:12 Q You are all over the place on the factor,  
753:13 just in this memo, right? We've seen now four

753:14 different representations of the factor in this  
753:15 very memo, right? We've seen the .32 that you  
753:16 calculated, right?  
753:17 A Correct.  
753:18 Q We've seen the .67, right?  
753:19 A Correct.  
753:20 Q We've seen the .89?  
753:21 A Correct.

151. The fourth offering memorandum additionally represented: “**Advertising Yield Factor:** this is the key driver of the Blue Ocean Portfolios model. This advertising factor for 2011 was 0.78. In 2012 this factor was 0.89.” (RX-004, BO 9143).

152. The fourth offering memorandum represented: “Investors should expect the bulk of their returns in years 3-5.” (RX-004, BO 9144). The memorandum contained a chart showing “months to payback” based on a .90 advertising ratio and a range of monthly payout percentages ranging from 0.05% to 0.30%. (RX-004, BO 9134). The chart showed that if BOP kept payments to the minimum 0.05%, investors would be repaid in 176 months. (*Id.*). The chart further reflected that if investors were to be paid back in five years, BOP would need to pay at least four times the minimum monthly percentage. (*Id.*). The memorandum contained another chart showing “Months to Payback” based on advertising ratios ranging from 0.50 to 1.30 and monthly payout percentages ranging from 0.05% to 0.30%. (RX-004, BO 9145). According to that chart, if an investor was going to be paid back in five years, BOP would need to quadruple the minimum monthly payout percentage and keep the advertising ratio at 0.5 or better.

748:1 Q And if you wanted an investor to get paid  
748:2 back in five years, you would need to pay them at  
748:3 least four times the minimum payout, right,  
748:4 assuming your current -- or assuming a factor of  
748:5 .9?  
748:6 A Assuming the advertising spend with the  
748:7 factor, with the asset appreciation. You know,  
748:8 assumes a lot of things, yes.  
748:9 Q But you're showing them that if they want

748:10 to get their money back in five years, at least  
748:11 based on your table, you need to increase the  
748:12 payments four times, right?

748:13 A Correct.

763:8 Q And you previously told them on the  
763:9 previous page they're getting paid back in five  
763:10 years. Let's say you triple the monthly payout  
763:11 amount at the best factor possible, right? They're  
763:12 still not getting paid back in five years.

763:13 If they want to get paid back in five  
763:14 years, you have to quadruple the minimum payout  
763:15 amount percentage, the minimum payout percentage,  
763:16 which you never did, and hope to God that the  
763:17 factor is going to be the lowest possible option  
763:18 you're presenting to investors, right?

763:19 A That's what the chart says.

153. The fourth offering memorandum contained the following disclosure: "If Blue Ocean Portfolios fails to raise at least \$50,000 prior to March 1, 2013, then there may not be enough money to meet payroll and the next quarterly fee revenues estimated at \$195,000 will not be received until the first week of April. This would leave a 4-5 week gap in funding and the consequences that would ensue. It will take at least \$200,000 to make sure that Blue Ocean Portfolios is fully funded for the ongoing staff and advertising for St. Louis office and at least \$375,000 to adequately fund both the St. Louis and Chicago offices." (RX-004, BO 9135).

154. The fourth offering memorandum represented, similar to the second and third memorandum, that "the fewer number of units issued, the better for owners and employees." (RX-004, BO 9143). The fourth memorandum additionally represented: (a) "Blue Ocean Portfolios creates value for its clients by eliminating conflicts of interest"; (b) "the concept of capitalizing the business with a Royalty method would appear to be the most compelling way for the investors, owners, and employees to align their interests"; and (c) "The expansion of capital in the form of Royalty Units is the optimal way to fund growth...and align all interests for the highest potential return at the least risk." (RX-004, BO 9134, 9137, 9151).

155. The fourth offering memorandum disclosed the Binkholder investment adviser bar order and the grand jury's investigation of Binkholder. (RX-004, BO 9146). In disclosing Binkholder's bar order, the memorandum stated: "The Order was based in part of findings that Mr. Binkholder did not disclose to investors...potential conflicts of interest." (*Id.*). The fourth round memorandum does not disclose any conflicts attendant to the royalty unit offering or that Winkelmann would use investor proceeds to raise his compensation. (RX-004).

156. In the fourth offering, BOP sought to raise up to \$375,000. (RX-004, BO 9133) ("Blue Ocean Portfolios...is seeking up to \$375,000 in capital to expand its business."). However, only two investors bought a total of \$125,000 in fourth round units. (Ex. 455)

766:25 Q Page 3, please. First paragraph. You

767:1 were trying to raise \$375,000?

767:2 A Seeking up to 375,000.

767:3 Q All right. And with all -- you couldn't

767:4 do it? You didn't do it? You only sold this to

767:5 two investors, right?

767:6 A There was only two subscribers in round

767:7 four.

767:8 Q And one of them was this Mr. Swift who

767:9 we're going to hear from who's a very close friend

767:10 of yours, and despite knowing all this negative

767:11 information about the company, because he's your

767:12 buddy and he's rich, he's still going to invest,

767:13 right? He invested with you?

767:14 A He subscribed to round four.

767:15 Q Dr. Gamache, I can't tell you anything

767:16 about her, but those are the only two people that

767:17 could invest that ended up investing?

767:18 A That's correct.

157. Before Winkelmann could raise additional funds in the fourth round offering, he voluntarily agreed to the Missouri Securities Division's request that BOP stop issuing royalty units.

767:25 Q And when you couldn't sell to anybody but

768:1 your two close friends, you volunteered -- you

768:2 voluntarily agreed with the State of Missouri to  
768:3 suspend the issuance of Royalty Units?  
768:4 A They requested we suspend the issuance  
768:5 and we complied.  
768:6 Q And you voluntarily agreed to it, right?  
768:7 A We complied with their request.  
768:8 Q Did you voluntarily agree or not?  
768:9 A It was -- yes, I voluntarily agreed to  
768:10 stop.  
768:11 Q Nobody made you do it?  
768:12 A Nobody made me do it.  
768:13 Q Nobody made you stop raising money in any  
768:14 subsequent offerings?  
768:15 A There wasn't any subsequent offerings.  
770:22 MR. HANAUER: Okay. Let's just show the  
770:23 document, Exhibit 346, please. That's your Wells  
770:24 submission. And I need the -- go to page 11 of the  
770:25 actual writing, not the PDF, so there we go, and it  
771:1 should be the last sentence of that page,  
771:2 continuing on to the first sentence of the next  
771:3 page.  
771:4 Q And you see you're talking about that  
771:5 bridge that you mentioned. "That is the last round  
771:6 of financing that Blue Ocean issued and we  
771:7 voluntarily agreed with the State of Missouri at  
771:8 that time to suspend the issuance of Royalty  
771:9 Units."  
771:10 A You got me.  
771:11 Q Did you write that?  
771:12 A Yes, yes, you got me there. I forgot I  
771:13 used the word "voluntarily."

158. On May 20, 2014, royalty unit investor Ed Mahoney emailed Winkelmann, writing: "...do you have an idea of how much money you will need before the royalties [are] paid in full. I will turn 74 this year....it looks like the amount in royalties paid to me is a thousand dollars for the quarter which would be four thousand a year...I think I have about 120 thousand coming at 4 thousand a year that would be thirty years." (Ex. 302, BO 934). Mr. Mahoney wrote this email before the start of the Division of Enforcement's investigation.

825:5 Q And this email is before you ever spoke  
825:6 to Mr. Benson, right?

825:7 A Yes.  
825:8 Q And it's before you -- you or Blue Ocean  
825:9 ever received any subpoena from the Division of  
825:10 Enforcement, correct?  
825:11 A Correct.

### **Winkelman's Compensation and Conflicts of Interest**

159. Winkelman claimed that he only got paid as result of BOP's revenues, not the royalty unit offerings.

396:1 Q There was a feature of the royalty unit  
396:2 that enticed you to sell it to your clients,  
396:3 correct?  
396:4 A What was that feature?  
396:5 Q That you get paid?  
396:6 A Well, you can -- I think I got paid from  
396:7 revenues. I don't -- my mind, I didn't get paid  
396:8 from offerings. I got paid from revenues of the  
396:9 firm.

160. Winkelman admitted that he made money as a result of BOP issuing royalty units.

1484:16 Q Right. So in fact, you did make more  
1484:17 money by issuing royalty units to your advisory  
1484:18 clients than you would have had those clients  
1484:19 invested in some other type of product, correct?  
1484:20 A Whatever the source of the money that  
1484:21 came in through these subscriptions, of course the  
1484:22 company expanded. It's quite evident. And as a  
1484:23 result, I made more money as the company became  
1484:24 more successful.

161. In addition to compensating Winkelman through direct payments and payments to Glen Abbey Partners, BOP made payments, for Winkelman's benefit, to Longrow Insurance Agency, one of Winkelman's other companies. Between August 2011 and March 2012, BOP paid Longrow at least \$41,000 in "management fees." (Ex. 457).

774:6 Q Now, the payments that Blue Ocean  
774:7 Portfolios made to you and Glen Abbey Partners  
774:8 weren't the only ones that Blue Ocean Portfolios

774:9 made for your benefit, correct?  
774:10 A There would have been payments earlier to  
774:11 Longrow Insurance Agency.  
774:12 Q Okay. And let's talk about that. Exhibit  
774:13 457, please.  
774:14 And it looks like if Mr. -- if Mr.  
774:15 Collins's math is right, there were \$40,000 or so  
774:16 in payments from Blue Ocean Portfolios to Longrow  
774:17 Insurance Agency?  
774:18 A Over those two years, yes.  
774:19 Q And the -- during 2011 that's the period  
774:20 of time that you said that you weren't getting a  
774:21 salary from Blue Ocean Portfolios, right?  
774:22 A Not a direct salary, no.  
774:23 Q But you were actually getting an indirect  
774:24 salary because Blue Ocean Portfolios was paying  
774:25 Longrow Insurance Agency which is another one of  
775:1 your companies, right?  
775:2 A Correct.  
777:5 Q But it is your testimony that of that  
777:6 \$40,000 from Blue Ocean Portfolios to Longrow  
777:7 Insurance Agency, some of that was just to  
777:8 compensate you, right?  
777:9 A Yes, and we did that for tax purposes.  
777:10 Q And just two weeks ago in your  
777:11 pre-hearing brief you admitted that at least one of  
777:12 the payments to Longrow reflected a salary payment  
777:13 to you, correct?  
777:14 A In lieu of a salary. In lieu of  
777:15 compensation, I think was how it was termed.

162. Winkelmann admitted that the payments to Longrow were to compensate him for his services to BOP.

1486:1 Q Okay. And do you remember how you  
1486:2 testified yesterday -- well, let's look at Exhibit  
1486:3 RX89. Can you blow that up? And you testified  
1486:4 with Mr. Wolper that the \$27,000, that was a  
1486:5 payment in lieu of salary. Do you remember that?  
1486:6 A Yes.  
1486:7 Q And then -- but you said for the  
1486:8 remainder \$2,000 a month, that was for shared  
1486:9 office servers?  
1486:10 A Yeah, that was paid to Longrow Insurance  
1486:11 Agency for some servers, some equipment, use of

1486:12 the office.

1486:13 Q That's the same \$2,000 that you just

1486:14 testified you were getting in compensation?

1486:15 A Yeah. Well, where did the money go? I

1486:16 was the only officer of Longrow Insurance Agency.

1486:17 Of course I took that money.

163. Winkelmann testified during the investigation that the only work Longrow did on BOP's behalf was to host three meetings with prospective BOP clients.

775:3 Q And the only work Longrow ever did on  
775:4 Blue Ocean Portfolios' behalf was to host three  
775:5 meetings for prospective Blue Ocean Portfolios  
775:6 clients?

775:7 A That's not true.

775:8 Q Can we pull up your investigative  
775:9 testimony, please, page 54, line 17 through 22.

775:10 And when you testified back in February

775:11 of 2015, you were asked:

775:12 "Other than the meetings with three  
775:13 prospective clients that you identified, what other  
775:14 work did Longrow Insurance Agency do on behalf of  
775:15 Blue Ocean Portfolios, LLC, to be entitled to  
775:16 management fees paid by Blue Ocean Portfolios,  
775:17 LLC?"

775:18 "Answer: None that I know of."

775:19 Am I reading that correctly?

775:20 A That's what it says.

775:21 Q And at the time you made those  
775:22 statements -- that statement you were under oath?

775:23 A Correct.

164. In addition to the payments to Longrow, between October 2011 and September 2012, BOP paid more than \$46,000 to another one of Winkelmann's companies, Blue Ocean ATM. (Ex. 457)

165. In July 2012, Winkelmann caused BOP to pay \$50,000 to the plaintiffs in a lawsuit against Winkelmann, BOP, and certain other of Winkelmann's companies. (Ex. 126). The settlement in that lawsuit obligated Winkelmann, as opposed to BOP, to pay \$50,000 to the

plaintiffs. (Ex. 170, § 3.1(c) ("James [Winkelmann] shall pay \$50,000 to Plaintiffs...").

Winkelmann never reimbursed BOP for the \$50,000.

800:10 Q Okay. And you settled the lawsuit in

800:11 July 2012?

800:12 A Yeah, there was a mediation out in

800:13 California with Albert Watkins and myself, and we

800:14 settled the lawsuit I think for -- I want to say we

800:15 paid a ransom, Blue Ocean -- I agreed myself and

800:16 Blue Ocean would pay -- or Blue Ocean, I don't know

800:17 what the actual wording.

800:18 I think Albert Watkins had some -- he, in

800:19 my OTR testimony, had some legal explanation of why

800:20 there was some error or something, but Blue Ocean

800:21 Portfolios paid a \$50,000 ransom to make this go

800:22 away. I agreed to that in 2000 -- July or August

800:23 of 2012.

802:19 Q And, in fact, you didn't actually pay

802:20 that money yourself. You caused Blue Ocean

802:21 Portfolios to make a \$50,000 payment directly from

802:22 its operating account to the plaintiffs in the

802:23 lawsuit, correct?

802:24 A That's correct.

804:20 Q Did you reimburse Blue Ocean Portfolios

804:21 \$50,000 in relation to the payment it made to the

804:22 plaintiff in this lawsuit?

804:23 A No, because it wasn't owed.

166. Winkelmann agreed that the money BOP used to pay Winkelmann's \$50,000 settlement obligation could have been used to pay the royalty unit investors.

803:7 Q And that money, that \$50,000 could have

803:8 been used to pay the Royalty Unit investors?

803:9 A Could have been used for anything.

803:10 Q Including to repay the Royalty Unit

803:11 investors?

803:12 A If there was sufficient cash flows, sure.

167. Winkelmann never disclosed to the royalty unit investors that Winkelmann used \$50,000 in BOP funds to settle his personal debt.

806:4 Q Did you disclose to the Royalty Unit

806:5 investors that Blue Ocean Portfolios used \$50,000

806:6 of Blue Ocean's money to settle one of your  
806:7 personal debts?  
806:8 A Well, again, no, because it wasn't a  
806:9 personal debt of Blue Ocean -- of me. It was a  
806:10 ransom that Blue Ocean Portfolios had to pay to get  
806:11 out of a lawsuit.

168. In August 2013, Blue Ocean ATM had a concession to have four ATM machines at the Festival of Little Hills. Prior to the festival, Blue Ocean ATM did not have the \$70,000 needed to fill the ATM machines at the festival. At the time, BOP had approximately \$100,000 in its bank account.

809:14 Q And in August 2013, Blue Ocean ATM had a  
809:15 concession to have its -- one of its ATM machines  
809:16 at a festival in St. Charles, Missouri?  
809:17 A Blue Ocean ATM had the opportunity to put  
809:18 four Blue Ocean ATM machines at a fair that was  
809:19 going to attract over 200,000 people.  
809:20 Q That was the Festival of Little Hills?  
809:21 A I think that's the name of it.  
810:17 Q So Blue Ocean ATM did not have \$70,000 in  
810:18 cash to put in its ATM machines for the Festival of  
810:19 the Little Hills, correct?  
810:20 A Correct.  
810:21 Q But Blue Ocean Portfolios at the time had  
810:22 a balance of about \$100,000 in its bank account?  
810:23 A That's my recollection.

169. In order to fill the machines, Winkelmann caused Blue Ocean ATM to borrow \$70,000 from a bank, with the collateral for the loan being the funds in BOP's bank account. Winkelmann had the discretion whether to use the BOP funds as collateral for Blue Ocean ATM or to distribute those funds to the royalty unit investors.

810:24 Q And so you decided to have Blue Ocean  
810:25 Portfolios buy a CD and pledge that CD as a loan to  
811:1 Blue Ocean ATM so it could get the cash to fill the  
811:2 machines?  
811:3 A The transaction was, to my understanding,  
811:4 that Blue Ocean Portfolios purchased the CD, but it  
811:5 actually never got purchased because by the time

811:6 the CD was set up, the loan was repaid. The idea  
811:7 was for Blue Ocean Portfolios to purchase a CD,  
811:8 pledge the CD as collateral for Blue Ocean ATM to  
811:9 get the \$70,000 on that Thursday and repay it  
811:10 Friday or Monday, the following Monday.

812:18 Q And, again, you had the discretion  
812:19 whether to take that \$70,000 and pledge it so that  
812:20 Blue Ocean ATM can fill up the machines. If you  
812:21 had wanted to, you could have also given the  
812:22 \$70,000 to Royalty Unit investors, correct?

812:23 A Well, that would have created the cash  
812:24 crunch later in the quarter. Because that money,  
812:25 you know, the money comes in early in the quarter,  
813:1 it's depleted until the end of the quarter until  
813:2 more new -- like right now we've got this money in  
813:3 the first of the quarter, lasts until the end of  
813:4 the quarter. This money was idle money for the  
813:5 purpose to fund expenses and commitments later in  
813:6 the quarter.

813:7 Q It was idle money. And, yes, commitments  
813:8 were coming up, but you had the discretion, if you  
813:9 wanted to, to give that money or some portion of it  
813:10 back to Royalty Unit holders, correct?

813:11 A Yes.

170. In an email to the bank requesting that BOP funds be used as collateral for the Blue Ocean ATM loan, Winkelmann wrote: "Blue Ocean Portfolios, LLC has enough in the operating account to lend out this cash...Unfortunately this creates a bunch of regulatory scrutiny by the SEC when they examine Blue Ocean Portfolios – nothing illegal just a hassle. I would rather avoid moving money back and forth between the two companies." (Ex. 274, EBT 000910). At the time, BOP was being examined by SEC examiners.

814:8 And at this time this was like a month  
814:9 after Mr. Collins and his team came in and did the  
814:10 on-site exam, correct?

814:11 A Correct.

171. Blue Ocean ATM realized \$4,000 from the festival. (Ex. 375, BO 9540 ("More than 250,000 people attended the festival and Blue Ocean ATM, LLC realized approximately

\$4,000 in revenue from this activity.”)). Winkelmann never made Blue Ocean ATM pay BOP or the royalty unit investors for using BOP funds as collateral.

815:17 Q Did you make Blue Ocean ATM pay any money  
815:18 to Blue Ocean Portfolios for using Blue Ocean  
815:19 Portfolios' money as collateral?

815:20 A Not until such time as Mr. Benson raised  
815:21 the issue with me later in 2015

818:23 Q So even back -- even fast-forwarding to  
818:24 2015, does Blue Ocean Portfolios actually make a  
818:25 payment to any of the Royalty Unit holders related  
819:1 to this episode with the ATM?

819:2 A No, because at the time the Blue Ocean  
819:3 Portfolios Royalty Unit holders as a group I think  
819:4 were ahead of the .25 minimum that the deal calls  
819:5 for by \$15,000 or so. So we just reduced the  
819:6 amount that we credited the -- we changed the  
819:7 balance of the royalties owed to their benefit, to  
819:8 the investors' benefit.

822:19 Q And because you've paid him 500 bucks  
822:20 over, even though he was entitled to 20 bucks from  
822:21 the ATM transaction, you aren't going to pay him  
822:22 the 20 bucks; you're just going to credit the  
822:23 overpayment, right?

822:24 A That's what we did. That's how we  
822:25 handled it.

172. Winkelmann testified during the investigation that an investment advisor selling its own securities to its advisory clients could create a conflict of interest.

778:20 Q Of course not. Let's talk about  
778:21 conflicts, please. You can take that down. When  
778:22 you were offering the Royalty Units to your  
778:23 advisory clients, there was certainly a potential  
778:24 conflict of interest, correct?

778:25 A I thought it was on the recommendation is  
779:1 where the conflict would rest. That's what Mike  
779:2 Morgan and I concluded.

779:3 Q But there was certainly a potential  
779:4 conflict of interest in that arrangement?

779:5 A Again, on the recommendation.

779:6 Q I'm not talking about recommendation --  
779:7 oh, okay. Well, let's just look at your  
779:8 investigative testimony then. Page 204, line 17

779:9 through 204, 20.  
779:10 You were asked:  
779:11 "You are not aware of any conflict in an  
779:12 investment advisor selling its securities to its  
779:13 advisory clients?"  
779:14 "Answer: There certainly could be."

173. The royalty unit offering materials did not disclose any potential conflict of interest, and Winkelmann never discussed conflicts or potential conflicts with the royalty unit investors.

780:1 Q And if an advisor sells a product to an  
780:2 advisory client, that's a -- that's a clear  
780:3 conflict, right?  
780:4 A Most likely would be.  
780:5 Q And the Royalty Unit offering materials  
780:6 make no disclosure of any potential conflict of  
780:7 interest, correct?  
780:8 A Not that I know of.  
782:22 Q Right. But to the extent -- so are you  
782:23 saying that you never, outside the offering  
782:24 materials, disclosed a conflict or potential  
782:25 conflict to any Royalty Unit investor?  
783:1 A I don't remember discussing any conflicts  
783:2 with people.  
783:3 Q You never discussed -- you never -- you  
783:4 never discussed it with them? You never discussed  
783:5 conflicts or potential conflicts with Royalty Unit  
783:6 investors, correct?  
783:7 A As I said, that's what I remember. But  
783:8 what would the conflicts be?

174. BOP never implemented any written policies or procedures relating to disclosure of conflicts of interest for the royalty unit offerings.

783:13 Q And Blue Ocean Portfolios never adopted  
783:14 any policies or procedures to ensure it was  
783:15 disclosing potential conflicts attendant to the  
783:16 Royalty Unit offerings, correct?  
783:17 A I don't remember that any special  
783:18 procedures were adopted inside our procedure  
783:19 manual.  
783:20 Q Or any procedure that wasn't special,

783:21 correct?

783:22 A Just to the point that it was our policy  
783:23 to tell prospective investors who happened to be  
783:24 advisory clients that we couldn't recommend them.  
783:25 It would have to be their decision. Here's the  
784:1 information. If you want to do it, fine; if you  
784:2 don't want to, that's okay too.

784:3 Q What you just said, that's not in any of  
784:4 Blue Ocean Portfolios' policies or procedures,  
784:5 correct?

784:6 A It's just the practice we maintained.

784:7 Q But there's no written policy or  
784:8 procedure to that effect?

784:9 A Not that I know of.

### **Reliance on Counsel**

175. Winkelman never asked Greensfelder whether he owed fiduciary duties to his advisory clients in regards to the royalty unit offerings.

1506:17 Q Let me submit it this way. Did you ever  
1506:18 ask Mr. Morgan whether you owed fiduciary duties  
1506:19 to your advisory clients in regards to the royalty  
1506:20 unit offerings?

1506:21 A I don't remember an explicit question  
1506:22 like that.

176. The Greensfelder law firm drafted the royalty unit subscription agreements, which Winkelman reviewed and approved.

535:23 Q And then could we go to page 94 [of RX-001], please.  
535:24 And this is the subscription agreement?

535:25 A Yes.

536:1 Q And you reviewed and approved this  
536:2 subscription agreement before you gave it to  
536:3 investors?

536:4 A Like I testified before, Mike Morgan or  
536:5 Giles would have sent a draft over for my review and  
536:6 approval.

536:7 Q And Mr. Morgan and Giles?

536:8 A Giles Walsh.

536:9 Q Those were attorneys at the Greensfelder  
536:10 Law Firm?

536:11 A Correct, in their securities practice  
536:12 area.

536:13 Q They are securities lawyers?  
536:14 A Correct.  
536:15 Q And Mr. Morgan was a very experienced  
536:16 securities lawyer, correct?  
536:17 A Yes.

177. In the subscription agreement, each investors was required to “represent” and “warrant” that BOP “has not provided any investment advice” to the investor. (*See, e.g.*, RX-001, BO 7340; Ex. 2, p. 2 of PDF; Ex. 29, BOP 8772; Ex. 33, BOP 8892; Ex. 119, BOP 9667; Ex. 124, BOP 9375; Ex. 192, BOP 9738; Ex. 347, BOP 9782; Ex. 242, BOP 9851; Ex. 246, BOP 9865)

540:12 Q And the very first representation that  
540:13 Greensfelder required is that the company has not  
540:14 provided any investment advice to the subscriber.  
540:15 Do you see that?  
540:16 A Yes.  
540:17 Q And the company's Blue Ocean Portfolios,  
540:18 correct?  
540:19 A Correct.  
540:20 Q And the subscriber is the royalty unit  
540:21 investor?  
540:22 A Correct.  
541:17 Q But every single investor in the royalty  
541:18 units who is also a Blue Ocean Portfolios advisory  
541:19 client is making a false representation there,  
541:20 correct?  
541:21 A I'm not a lawyer, it sounds like a legal  
541:22 conclusion. I don't know.  
541:23 Q Investment advisor provides investment  
541:24 advice to their clients, right?  
541:25 A Correct.  
542:1 Q And that's what you did for Blue Ocean  
542:2 Portfolios' advisory clients who are playing Blue  
542:3 Ocean Portfolios's management fees, correct?  
542:4 A Correct.  
542:5 Q And Greensfelder is telling you right here  
542:6 those people paying Blue Ocean Portfolios management  
542:7 fees they can't invest in this, correct?  
542:8 A I'm not ready to make any conclusions.  
542:9 Q Well, you --  
542:10 A I've never thought about that before.

542:11 Q And that same representation, that is in  
542:12 every single subscription agreement signed by a  
542:13 royalty unit investor, correct?  
542:14 A I would assume it's in all four.

178. Winkelmann testified that after reading the Binkholder investment adviser bar order, he alerted Michael Morgan about the order and they spoke "extensively" about the order. Winkelmann further testified that he had discussions about Binkholder's bar order with Morgan's partner, Wendy Menghini.

573:20 Q It's your testimony after reading this  
573:21 order, despite all your experience in the securities  
573:22 industry, and your deep understanding of the  
573:23 fiduciary concept, this order didn't put you on  
573:24 notice that you could have a conflict of interest  
573:25 problem relating to offering the royalty units to  
574:1 your advisory clients?

574:2 A Well, that's why I sent this over to Mike  
574:3 Morgan. Mike Morgan, I talked to him about it the  
574:4 day it was published of how we're going to deal with  
574:5 this document.

574:6 Q And you had a serious conversation with  
574:7 Mr. Morgan about how you're going to deal with this,  
574:8 right?

574:9 A Correct.

575:24 Q And so you testified, you had a lengthy  
575:25 discussion, an in-depth discussion at the end of  
576:1 2011 about how to deal with the Binkholder order?

576:2 A That's correct.

577:4 Q And you emailed him a copy of the bar  
577:5 order, so he could see it with his own eyes,  
577:6 correct?

577:7 A I think he took it from the Missouri  
577:8 website.

577:9 Q You just testified earlier you sent him a  
577:10 copy?

577:11 A Correct. I talked to him about it. I  
577:12 don't know if I emailed it to him. There would be  
577:13 no need to email it to him. I think I had a call  
577:14 from Wendy [Menghini] that day too.

577:15 Q Wendy [Menghini], the day you emailed it to  
577:16 Mr. --

577:17 A No. I didn't say I emailed it. I believe

577:18 Wendy is involved in the conversation.  
656:21 Q But, otherwise, right after you found out  
656:22 about the bar order you did call Mr. Morgan and  
656:23 alerted him to the order, right?  
656:24 A It's my recollection around that time I  
656:25 talked to Mr. Morgan extensively about it.  
657:1 Q And that's where I'm going. You took  
657:2 time to digest the order so he could intelligently  
657:3 speak to you extensively about it, right?  
657:4 A Uh-huh.  
657:5 Q Is that a "yes"?  
657:6 A Yes, I'm sorry.  
657:7 Q And you had a -- he did in fact speak  
657:8 extensively to you about it, right?  
657:9 A That's my recollection.  
657:10 Q And there was even phone calls where his  
657:11 partner, Ms. Menghini, participated in those phone  
657:12 calls, right?  
657:13 A That was my recollection.  
1494:25 Q And you testified that you learned --  
1495:1 that after you learned about the bar order you  
1495:2 called Mr. Morgan and alerted him to the order and  
1495:3 you guys spoke extensively about it, right?  
1495:4 A Yeah. As I testified, I think there was  
1495:5 another lawyer on the phone with me.  
1495:6 Q That's right. Ms. Menghini, right?  
1495:7 A I think she was on the phone.  
1495:8 Q She was on the call too and she was able  
1495:9 to speak intelligently about the order, right?  
1495:10 A Yes.  
1495:11 Q So presumably before the call Mr. Morgan  
1495:12 and Ms. Menghini reviewed the order, right?  
1495:13 A It's my recollection.

179. Winkelmann was then presented with the Greensfelder billing invoices, which showed that BOP was not billed for any legal services in December 2011 or January 2012. (Ex. 277, GHG 005998-6000). In the Greensfelder invoices, Wendy Menghini does not bill any time to BOP until August 2012. (RX-113, p. 25).

574:22 Q All right. Well, let's look at -- well,  
574:23 let's look at the bills, Exhibit 277.  
574:24 A Okay.  
574:25 Q And these are bills that were sent to you,

575:1 correct?  
575:2 A Correct.  
575:3 Q All right. And let's go to page 10 of the  
575:4 bills. Page 10 of the PDF, what's the date on  
575:5 those?  
575:6 A June 2011.  
575:7 Q Okay. So that's June 2011, and he's  
575:8 billing you -- that's before the Binkholder order?  
575:9 A Correct.  
575:10 Q Let's go to the next page. What's the  
575:11 date on that. Okay. Same bill. Let's go to the  
575:12 next page. What's the date on that? March 27th,  
575:13 2012.  
575:14 And the reason the next bill is on March  
575:15 27th, 2012 is because you didn't call Mr. Morgan and  
575:16 have a lengthy discussion about how to deal with the  
575:17 Binkholder order because if you did, he would have  
575:18 billed you for it?  
575:19 A That's your assumption.

180. After being confronted by the Greensfelder billing entries, which show no time billed during the period that Winkelmann testified he had discussed the Binkholder bar order with Morgan and Menghini, Winkelmann claimed that Mr. Morgan regularly did not bill Winkelmann for legal services.

576:12 Q He was doing pro bono work for you?  
576:13 JUDGE PATIL: Why was he having discussion  
576:14 where he provided legal advice and counsel without  
576:15 billing for it?  
576:16 THE WITNESS: Yes. Mike Morgan and I were  
576:17 close friends. He had been former in-house counsel  
576:18 for us. We frequently had social breakfasts,  
576:19 lunches together.  
576:20 A lot of intimate client-attorney  
576:21 discussions were not reflected on his invoice.  
657:14 Q And then when we showed you the billing  
657:15 records for the time period of late December 2011  
657:16 to mid-2000 -- or call it February 2012, there was  
657:17 no record whatsoever of any bills from the  
657:18 Greensfelder law firm to you; do you remember  
657:19 seeing that?  
657:20 A Yes.  
657:21 Q And I believe your explanation for that

657:22 was Mr. Morgan, may he rest in peace, he was a very  
657:23 good friend of yours. And he regularly didn't bill  
657:24 you for the legal services he performed on your  
657:25 behalf; is that correct?

658:1 A I would say that Mr. Morgan did not bill  
658:2 me for all the legal services that he performed.

658:3 Q And that would include services that his  
658:4 partner, Ms. Menghini, performed also?

658:5 A I don't know. It's my understanding that  
658:6 Mr. Morgan was the billing partner so that he  
658:7 would -- any bills that would go out of  
658:8 Greensfelder toward Blue Ocean or myself would be  
658:9 funneled through his desk and he would make the  
658:10 appropriate adjustments, allegations.

658:11 Q He could write off people's time?

658:12 A That's my understanding.

658:13 Q Okay. Can we look at Exhibit -- and it's  
658:14 your testimony that he frequently wrote off the  
658:15 time that he provided legal services to you?

658:16 A I didn't say that. I said he didn't bill  
658:17 me for all the time.

181. While Winkelmann claims Mr. Morgan did not bill him for all services rendered, Mr. Morgan did bill BOP for legal services in increments as small as 0.1 and 0.2 hours. (Ex. 277, GHG-005993 (entries for 3/4/11, 3/11/11, 3/16/11), GHG-006000 (entry for 2/2/12); RX-113, p. 47 (On January 11, 2013, Morgan bills for 0.1 hours regarding "Binkholder email.")).

658:18 Q Okay. Let's look at Exhibit 277 which  
658:19 are the bills, and let's just pick March 2011 and  
658:20 that would be page 5. And can we pull up the  
658:21 entries from March 4th through March 16. Perfect.

658:22 And it looks like on March 4th, 2011, Mr.  
658:23 Morgan is billing you for .2 hours of his time; do  
658:24 you see that?

658:25 A Yes.

659:1 Q That's 12 minutes. And then down on  
659:2 March 16th, he also bills you again for 12 minutes;  
659:3 do you see that?

659:4 A Yes.

659:5 Q And then you see that on March 11th he  
659:6 bills you for a tenth of an hour on any given day?

659:7 A That's what it says.

659:8 Q That's only six minutes, right? So

659:9 here's a -- here's an attorney who puts food on the  
659:10 table by billing his clients, who you say regularly  
659:11 worked for free. He did a detailed review of Mr.  
659:12 Binkholder's bar order, had multiple in-depth  
659:13 discussions with you about it, which included  
659:14 another partner at his law firm, and he just  
659:15 completely wrote off that time and didn't bill you  
659:16 for any of it? Is that your testimony?  
659:17 A As I sit here today, that's the best of  
659:18 my recollection. So, yes.

182. Winkelmann did email the Greensfelder attorneys a copy of Binkholder's bar order, but not until January 21, 2013. (Ex. 220). Winkelmann agreed that this email was the only written record of Greensfelder being apprised of the Binkholder bar order.

580:25 Q And other than your recollection, the only  
581:1 evidence including 2500 pages of emails and detailed  
581:2 billing records, the only record of Greensfelder  
581:3 getting this bar order or considering it is in  
581:4 January of 2013 which is a full year after you  
581:5 learned about it, correct?

581:6 A That's correct. That's the only written  
581:7 record.

1492:25 Q And you want Judge Patil to find you  
1493:1 credible when you testified that on advice of  
1493:2 counsel you chose not to disclose Mr. Binkholder's  
1493:3 investment advisor bar order in the second and  
1493:4 third offering memorandums, correct?

1493:5 A That's correct.

1493:6 Q And you are aware that there wasn't a  
1493:7 single document introduced in evidence at this  
1493:8 proceeding that supports that testimony, correct?

1493:9 A That's correct.

### **Custody Rule, Forms ADV, and Compliance Issues**

183. In a December 13, 2013 post on BOP's website, Winkelmann wrote: "It is never a good idea to have one company act as both the custodian and advisor of your wealth... You are increasing the odds of an unfavorable outcome when the investment 'advice' is coming from the same organization that is also the custodian of your wealth. It is very important that you clearly

understand the relationship between your advisor and the actual custodian of your wealth.” (Ex. 290, p. 3-4). Winkelmann wanted investors to take heed of that guidance.

788:14 Q And then you write the last sentence,  
788:15 "You are increasing the odds of an unfavorable  
788:16 outcome when the investment advice is coming from  
788:17 the same organization that is also the custodian of  
788:18 your wealth."  
788:19 A Correct.  
788:20 Q "It is very important that you clearly  
788:21 understand the relationship between your advisor  
788:22 and the actual custodian of your wealth."  
788:23 You wrote that, right?  
788:24 A Correct.  
788:25 Q And you wanted investors to take heed to  
789:1 that guidance, correct?  
789:2 A Correct.

184. In May 2012, BOP altered this practice by paying the accrued amounts on quarterly basis. Winkelmann testified during the investigation that for the period between when the cash receipts came into BOP's bank account and when they were paid to investors, the accrued funds belonged to the investors.

785:3 Q And in May 2012, Blue Ocean altered this  
785:4 process by paying the accrued amounts not on a  
785:5 monthly basis but on a quarterly basis?  
785:6 A That's correct because the bulk of the  
785:7 revenue came in quarterly and the amounts that  
785:8 we're dealing with between the quarters was so  
785:9 small it just made a ridiculous administrative  
785:10 burden.  
786:3 Q And at the time between the time the cash  
786:4 receipts came in to the time the investors get  
786:5 their paycheck, the funds accrued to the Royalty  
786:6 Unit holders belonged to the Royalty Unit holders,  
786:7 correct?  
786:8 A It was a payable on our books. It was  
786:9 owed to the royalty holders.  
786:10 Q But it belonged to the Royalty Unit  
786:11 holders, right?  
786:12 A It was owed to them.  
786:13 Q Byron, 247, line 9 through 247, line 15.

786:14 This is from your investigative  
786:15 testimony.  
786:16 A Yes, I'm familiar with this part of the  
786:17 testimony.  
786:18 Q "Question: And that amount that is  
786:19 client money just hasn't been paid -- it's client  
786:20 money at that point, right?"  
786:21 "Answer: It's Royalty Unit. Whoever has  
786:22 the deal on the Royalty Units, yes."  
786:23 "Question: It belongs to the Royalty  
786:24 Unit holder, correct?"  
786:25 "Answer: Correct."

185. Prior to Winkelmann's investigative testimony in February 2015, Winkelmann and BOP took the position that BOP did not have custody of client assets.

797:4 Q And between June 2011 and November 2014,  
797:5 Blue Ocean Portfolios filed at least 20 forms ADV  
797:6 representing that Blue Ocean Portfolios did not  
797:7 have custody of client assets?  
797:8 A That's what we believed at that time.  
797:9 Q Correct?  
797:10 A Correct.

186. For instance, between June 2011 and November 2014, BOP filed at least 20 Forms ADV which represented that BOP did not have custody of client assets. (Ex. 58, p. 12; Ex. 65, p. 12, Ex. 93, p. 24; Ex. 105, p. 24; Ex. 117, p. 25; Ex. 259, p. 25; Ex. 261, p. 3; Ex. 263, p. 25; Ex. 266, p. 25; Ex. 268, p. 25; Ex. 273, p. 25; Ex. 276, p. 25; Ex. 281, p. 25; Ex. 283, p. 25; Ex. 285, p. 25; Ex. 295, p. 25, Ex. 300, p. 25; Ex. 304, p. 25; Ex. 308, p. 25; Ex. 314, p. 25)

797:4 Q And between June 2011 and November 2014,  
797:5 Blue Ocean Portfolios filed at least 20 forms ADV  
797:6 representing that Blue Ocean Portfolios did not  
797:7 have custody of client assets?  
797:8 A That's what we believed at that time.  
797:9 Q Correct?  
797:10 A Correct.

187. After Winkelmann's February 2015 investigative testimony, BOP began taking the position that BOP did have custody of client assets. (Ex. 328, BO 9582 ("just trying to

comply as quick as possible now that I know their position on this nuance that is triggering custody.”)

789:14 Q And after your February 2005 testimony  
789:15 with Mr. Benson, you began taking the position that  
789:16 Blue Ocean Portfolios had custody of client assets,  
789:17 correct?  
789:18 A Correct.

188. Beginning in February 2015, BOP began filing Forms ADV which represented that BOP had custody of client assets. (*See, e.g.*, Ex. 332, p. 25; Ex. 335, p. 26; Ex. 340, p. 25; Ex. 343, p. 25).

791:14 Q And can you pull up Exhibit 332, please.  
791:15 And Exhibit 332 is a form ADV that Blue Ocean  
791:16 Portfolios filed on February 27th, 2015?  
791:17 A Correct.  
791:18 Q And the statements in this form ADV are  
791:19 all truthful and accurate?  
791:20 A At the time when we filed it we believed  
791:21 they were truthful and accurate.  
791:22 Q And can we go to page 25, please,  
791:23 Sections A1 and A2.  
791:24 And under the question: "Do you have  
791:25 custody of any advisory assets?"  
792:1 You answered: "Yes" for cash or bank  
792:2 accounts; do you see that?  
792:3 A Yes.  
792:4 Q And then you say that the cash or bank  
792:5 accounts you have custody over is \$28,500 for 18  
792:6 clients?  
792:7 A Yeah, that's the aggregate total for 18  
792:8 clients.  
792:9 Q And that's for the Royalty Unit holder  
792:10 investors who were also Blue Ocean Portfolios'  
792:11 clients?  
792:12 A Correct.

189. Also in February 2015, BOP began filing Form ADV brochures which stated: "In regards to the approximately eighteen Blue Ocean Portfolios clients who have also subscribed to royalty interests in the company; Blue Ocean Portfolios is considered to have custody of the

accrued royalties payable to these clients for a period of time of less than thirty days between the time that the royalty is accrued by Blue Ocean Portfolios and the time the royalty disbursements are paid out to these same clients/investors.” (Ex. 331, p. 13; *see also*, Ex. 334, p. 13; Ex. 339, p. 13; Ex. 342, p. 14).

190. Once Winkelmann changed his position and began recognizing that BOP has custody of royalty unit investor assets, he established a new BOP bank account that would automatically sweep and segregate the approximately 15% of BOP’s incoming cash owed to the royalty unit investors. (Ex. 328, BO 9583 (“We established a new bank account – Blue Ocean Royalty Disbursement Account. So when money comes in we will promptly move 15% over.”)).

790:10 Given your change in position on custody,  
790:11 you established a new bank account in February  
790:12 2015, right?

790:13 A Yes.

790:14 Q The Blue Ocean royalty disbursement  
790:15 account.

790:16 A Correct.

790:17 Q And what happens as a result of this  
790:18 account when cash receipts come in on a pretty  
790:19 automatic basis, approximately 15 percent is  
790:20 segregated into that new account, right?

790:21 A Correct.

790:22 Q And the 15 percent that's segregated into  
790:23 that new account, that is -- that's for the royalty  
790:24 payments, right?

790:25 A Yeah. It's a -- the payable -- the fund  
791:1 payable to the Royalty Unit holders is drawn on  
791:2 that new bank account.

791:3 Q And that new bank account was a Blue  
791:4 Ocean Portfolios bank, correct?

791:5 A Correct.

791:6 Q And you had signatory authority over that  
791:7 bank account?

791:8 A Correct.

791:9 Q So even though the money is now  
791:10 segregated in a different account, you still have  
791:11 ultimate control over that money's disposition,  
791:12 correct?

791:13 A That's why we retained the auditor.

191. Winkelmann developed and approved BOP's compliance manuals.

794:6 Q And you developed Blue Ocean Portfolios'  
794:7 compliance and procedure -- you developed and  
794:8 approved Blue Ocean Portfolios' compliance manuals?  
794:9 A Yes.

192. BOP's Policies and Procedures Manual, dated February 5, 2012, contained the following policy: "As a matter of policy and practice, Blue Ocean Portfolios LLC does not permit employees or the firm to accept or maintain custody of client assets. It is our policy that we will not accept, hold, directly or indirectly, client funds or securities, or have any authority to obtain possession of them, with the sole exception of direct debiting of advisory fees. Blue Ocean Portfolios, LLC will not intentionally take custody of client cash or securities." (Ex. 96, BO 10636, 10648).

193. Subsequent BOP Policies and Procedures Manuals, including those implemented after Winkelmann's February 2015 investigative testimony, contain similar policies prohibiting BOP from maintaining custody of client assets. (Ex. 179, BO 10225; Ex. 231, BO 10281; Ex. 292, BO 10015; Ex. 333, BO 10478 (March 2015 policy manual)).

#### **Winkelmann Does Not Accept Responsibility**

194. Winkelmann testified that the reason investors have not been repaid is because of the SEC enforcement action.

600:7 Q So the reason Mr. Mahoney and the other  
600:8 investors haven't got the bulk of their returns in  
600:9 years three through five is because of the SEC?  
600:10 A That's my belief.  
600:11 Q It's not because of anything you did,  
600:12 correct?  
600:13 A It's the disruption and chaos into the  
600:14 business, completely derailed the business plan.  
600:15 The enforcement action caused this event not to  
600:16 happen.

195. Winkelmann does not believe he has done anything wrong in regards to the royalty unit offerings.

827:7 Q But in terms of what you've done that are  
827:8 at issue between you and the Division of  
827:9 Enforcement, it's your position that you've done  
827:10 nothing wrong?

827:11 A Nothing that would constitute this level  
827:12 of scrutiny and charges, resources, redirected from  
827:13 the business to address these proceedings.

827:14 Q And let's go to your Wells submission,  
827:15 please.

827:16 A Okay.

827:17 Q Page 12 of the PDF in the second-to-last  
827:18 paragraph. Second-to-last paragraph, I think. Is  
827:19 that page 12 of the PDF?

827:20 MR. BENSON: That's page 11.

827:21 MR. KING: That's page 12 of the PDF but  
827:22 not page 12 of the document. That's the --

827:23 MR. HANAUER: Sorry, Your Honor, I  
827:24 apologize. May I have a moment?

827:25 JUDGE PATIL: Yes.

828:1 MR. HANAUER: Okay. No, you're right.  
828:2 You're right.

828:3 Q So right there under the first paragraph  
828:4 under Missouri Division of Securities.

828:5 A Correct.

828:6 Q And you're talking about the Missouri  
828:7 investigation that started in December 2012; do you  
828:8 see that?

828:9 A Correct.

828:10 Q And you write, "After all, we had done  
828:11 nothing wrong."

828:12 A That's what I believed then and now.

828:13 Q Okay. And you have done nothing to  
828:14 warrant this Court imposing any sort of relief  
828:15 against you, correct?

828:16 A Well, that's why we're here. Let the  
828:17 Court decide.

828:18 Q But in your belief you've done nothing to  
828:19 warrant this Court imposing any sort of relief on  
828:20 you, correct?

828:21 A That's -- again, that's what we're here  
828:22 to let the Court decide that.

828:23 Q So am I correct?

828:24 A Of course.

196. On August 23, 2016, Winkelmann drafted an email that he asked his assistant to send, on his behalf, to the royalty unit investors. (Ex. 464). In that email, Winkelmann presents quotes from his attorneys in this case, including: (a) "This is a classic case of prosecutorial overreach," (b) "Not only did Blue Ocean and Winkelmann do nothing wrong, to the contrary, they objectively strove to do everything right," and (c) "If anyone is guilty of harming the investors, it is the Division itself, and its wholly predictable decision to plead this case as 'fraud.'" (Ex. 464, p. 1)

829:17 Q And you write to Kelly that you'd like

829:18 her to send an email on your behalf to a group of

829:19 people, right?

829:20 A Yes.

829:21 Q And those people listed on Exhibit 464

829:22 are all Royalty Unit investors; do you see that?

829:23 A Yes.

830:18 Q Okay.

830:19 A I think it was all of the investors that

830:20 were alive.

197. Winkelmann testified that he believes these proceedings are "a classic case of prosecutorial overreach."

831:8 Q But really you think this case is a

831:9 classic case of prosecutorial overreach, right?

831:10 A Yes.

198. Winkelmann also testified that he believes the royalty unit investors have received everything they deserve, and have been made "whole" by BOP.

832:14 Q But you believe that Blue Ocean

832:15 Portfolios Royalty Unit investors have received

832:16 everything they deserve, yes or no?

832:17 A Yes, I believe that the investors are

832:18 whole.

**If Winkelmann, But Not BOP, Is Barred, the Royalty Unit Investors Can be Repaid**

199. Winkelmann testified that he has resources other than BOP that can fund his personal obligations.

750:12 Q So if the company can't make payroll and  
750:13 you have to forgo being paid, then the royalty --  
750:14 the inability to issue Royalty Units does affect  
750:15 your compensation, correct?  
750:16 A You could slice it up that way if you  
750:17 want, but I never thought of it that way.  
750:18 Q You were never thinking about how much  
750:19 money you were going to be getting from all this?  
750:20 A Well, yeah. Trying to create a company  
750:21 that's very valuable, of course.  
750:22 Q You're trying to put food on the table,  
750:23 right?  
750:24 A Yeah.  
750:25 Q You had kids in college?  
751:1 A Kids in college, medical bills, sure.  
751:2 Q A lot of expenses, right?  
751:3 A A lot of expenses.  
751:4 Q And you can't meet those expenses unless  
751:5 you can successfully sell Royalty Units.  
751:6 A That's not true. I can call Mom. There's  
751:7 other sources I have besides these Royalty Units to  
751:8 meet the family's obligations. Come on. That's  
751:9 crazy.

200. Respondents have waived any "inability to pay defense."

1417:8 MR. WOLPER: We've consulted with our  
1417:9 client and we are formally officially waiving the  
1417:10 inability to pay defense such as it is.  
1417:11 JUDGE PATIL: Thank you very much.  
1417:12 Please call your next witness.

201. Winkelmann testified that, at present, BOP is a viable business, even though it does not advertise.

1479:12 Q Right. And the financial situation of  
1479:13 Blue Ocean at the time was so bad that you  
1479:14 couldn't say I need to wait and heal up and get my  
1479:15 head in the game. You said we need to do an  
1479:16 offering now so we can bring in some money and

1479:17 keep the company going?  
1479:18 A Keep the business plan going.  
1479:19 Q That's right. That's right.  
1479:20 A To fund the advertising. The company,  
1479:21 all we had to do was cut expenses, you know, and  
1479:22 stop advertising, the company was fine. You know,  
1479:23 it was viable as it is today. It's still viable  
1479:24 with no advertising.  
1528:16 Q Okay. And I think if you testified --  
1528:17 if Blue Ocean can survive these proceedings, if it  
1528:18 can just stay in business, you have a very viable  
1528:19 company on your hands, right?  
1528:20 A Yeah. We get to this liftoff, though,  
1528:21 that Swift was talking about.  
1528:22 Q That's because the Blue Ocean Portfolio  
1528:23 model, it works and you've proven it works?  
1528:24 A I said in my Wells submissions it's  
1528:25 prototypically successful.  
1529:1 Q But the model works, right?  
1529:2 A Yeah.

202. Currently, Winkelmann and his daughter run BOP, and Winkelmann does not have any ownership interest in the firm.

1525:16 Q You testified yesterday how despite all  
1525:17 these disruptions caused to -- caused by these  
1525:18 proceedings, Blue Ocean Portfolios is still  
1525:19 surviving as a company, right?  
1525:20 A Viable.  
1525:21 Q It is viable, right?  
1525:22 A Correct.  
1525:23 Q And your family owns the business  
1525:24 through 23 Glen Abbey Partners, right?  
1525:25 A Correct.  
1526:1 Q And you don't have any ownership  
1526:2 interest in either Blue Ocean Portfolios or 23  
1526:3 Glen Abbey Partners, right?  
1526:4 A That's the result of the estate plan for  
1526:5 my cancer diagnosis.  
1526:6 Q And while you don't -- while you want  
1526:7 more employees, you and your daughter are doing a  
1526:8 good job of running the company, right?  
1526:9 A We're holding things together.

203. Ninety percent of BOP's client base has remained BOP clients, despite the SEC investigation and enforcement action.

1526:10 Q And the ninety percent of Blue Ocean  
1526:11 clients who didn't leave, they're still happy with  
1526:12 the Blue Ocean investment policy, right?

1526:13 A I can only assume that.

1526:14 Q And ninety percent of your client base  
1526:15 stuck around even with an SEC investigation and  
1526:16 public allegations of securities fraud, right?

1526:17 A Yes

204. BOP currently manages more than \$110 million in AUM, and for the third quarter of 2016 it generated \$186,000 in client management fees. For the first three quarters of 2015, BOP's net income (before payments to Winkelmann) was over \$200,000.

1526:18 Q And your current assets under management  
1526:19 are over a hundred million dollars, right?

1526:20 A Yes.

1526:21 Q What exactly is it as of today?

1526:22 A I don't know because I'm too busy being  
1526:23 here.

1526:24 Q It's north of a hundred million, right?

1526:25 A 112 million.

1527:1 Q Okay. So I'm guessing that off that the  
1527:2 management fees are about a million dollars a  
1527:3 year?

1527:4 A We just got the quarterly billing was  
1527:5 186,000 for the third quarter.

1527:6 Q 186,000 for the quarter?

1527:7 A Yes.

1527:8 Q Okay. And let's look at Exhibit RX110.  
1527:9 And that's the P&L of Blue Ocean's for the first  
1527:10 seven months of 2015?

1527:11 A Yes.

1527:12 Q And in just the first seven months of  
1527:13 2015 the company brought in \$630,000 plus in  
1527:14 revenues?

1527:15 A That's what it says. I haven't looked  
1527:16 at this document. It's been over a year.

1527:17 Q It's your exhibit.

1527:18 A Yeah.

1527:19 Q Take as much time as you like with it.

1527:20 A Okay. Yes, that's three quarters.  
1527:21 That's three quarters of revenue, yes, 630,000.  
1527:22 Q It's not -- oh, it's three quarters  
1527:23 because the July -- the third quarter management  
1527:24 fees come in July?  
1527:25 A The January billing to April billing and  
1528:1 the July billing are included in the 630.  
1528:2 Q So it's -- it's three quarters of the  
1528:3 company's revenues, right?  
1528:4 A Yeah, three calendar quarters.  
1528:5 Q Okay. And let's go down to the bottom  
1528:6 so we can see what -- and we may have to go to the  
1528:7 next page. Okay. Net income.  
1528:8 A Okay.  
1528:9 Q So in the net income for the company for  
1528:10 three quarters is -- as you said, is over  
1528:11 \$200,000, right?  
1528:12 A That doesn't include my compensation.  
1528:13 Q Right. But that's after paying all the  
1528:14 employees, right?  
1528:15 A Yes.

## II. Michael Collins Testimony

205. Michael Collins is an Office of Compliance Inspections and Examinations staff accountant who led the onsite examination of BOP in June 2013. The OCIE examination was initiated after a referral from the Missouri Division of Securities.

55:19 Q And you mentioned you worked at the SEC.  
55:20 How long have you worked for the SEC?  
55:21 A I started with the SEC in July of 1999.  
55:22 Q And what is your title?  
55:23 A Staff accountant.  
55:24 Q And what section of the SEC do you work  
55:25 for?  
56:1 A Part of the Office of Compliance  
56:2 Inspections and Examinations.  
57:1 Q And how was it that you came to hear  
57:2 about Blue Ocean Portfolios?  
57:3 A We received a referral from the State of  
57:4 Missouri's division of securities.  
57:5 Q And was there any issue in particular  
57:6 that the Missouri regulators alerted you to?  
57:7 A Yeah. The Royalty Units.

57:13 Q And what was your role on the exam?  
57:14 A I was the lead examiner.  
57:15 Q And when did the exam take place?  
57:16 A I believe it took place in early June,  
57:17 2013.

206. At the conclusion of the OCIE examination, Collins wrote a deficiency letter to BOP listing OCIE's examination findings. (Ex. 293). The deficiencies noted in Collins' letter included the following:

- a. Certain of the royalty offering memoranda represented that: "Investors should expect the bulk of their return in years 3-5." Collins' letter observed that this statement conflicted with the fact that, based on the repayment history at the time of his letter, it would take between 22 and 57 years for the investors to be repaid. (Ex. 293, p. 4 of pdf).
- b. The royalty unit offering memoranda failed to disclose (1) negative information about BOP's finances and (2) payments from BOP to Winkelmann's family's company, 23 Glenn Abbey Partners. (Ex. 293, pp. 4-5 of pdf).
- c. For its advertisements on the "Charlie Brennan Radio Show," BOP used a script which stated: "Blue Ocean Portfolios' sole duty is to increase the odds of their clients achieving favorable investment outcomes. They do this by eliminating conflicts of interest with their clients." (Ex. 293, p. 6-7 of pdf).

207. On April 7, 2014, Winkelmann responded to Collins' deficiency letter. (Ex. 298). Attached to Winkelmann's letter was a chart documenting distributions from BOP to 23 Glenn Abbey Partners. (Ex. 298, p. 8 of pdf). Winkelmann wrote:

"The purpose of these distributions was to compensate Mr. Winkelmann, as Founder/CEO of Blue Ocean Portfolios, for his service to the company. Mr. Winkelmann did not take any salary in 2011 or 2012. And in 2013, Mr. Winkelmann only took a salary of \$900 per month. Blue Ocean Portfolios' regular distributions to 23 Glen Abbey Partners were made in lieu of Mr. Winkelmann's salary in 2011 or 2012 or a larger salary in 2013. (Ex. 298, p. 4 of PDF).

208. According to Winkelmann, in 2012, BOP paid 23 Glen Abbey Partners \$125,007 in lieu of paying Winkelmann a salary. (Ex. 298, pp. 4 and 8 of PDF). In 2013, BOP paid 23

Glen Abbey Partners \$182,200 in lieu of paying Winkelmann a salary, and paid Winkelmann an additional \$7,200 in salary. (Ex. 298, pp. 4 and 8 of PDF)

209. On September 17, 2014, Collins advised Winkelmann that OCIE was referring its examination of BOP to the Division of Enforcement. (Ex. 312).

210. In advance of the trial in this matter, the Division of Enforcement asked Collins to calculate BOP's advertising ratios using BOP internal financial information. For any given time period, Collins calculated the ratio by dividing BOP's advertising spending during that period by the new recurring annual revenues generated during that period.

71:9 Q And what did I ask you to do?

71:10 A You asked me to use Blue Ocean's own  
71:11 internal documents to calculate an advertising  
71:12 conversion ratio and compare that to what was  
71:13 cited in the offering memorandum.

72:23 Q And for any given time period on this  
72:24 exhibit, can you just remind the court what was  
72:25 the methodology you used to calculate the factor?

73:1 A It -- again, it was just generally  
73:2 advertising spend divided by the annual revenue,  
73:3 but I tried to be as conservative as I could be.

211. Collins's methodology was consistent with the methodology Winkelmann described during his investigative testimony, which Collins attended.

73:24 Q Okay. And can you generally describe  
73:25 the methodology that Mr. Winkelmann testified that  
74:1 he used for calculating the factor that Blue Ocean  
74:2 Portfolios disclosed to investors?

74:3 A I believe it was the same as what I used  
74:4 in my calculations.

74:5 Q Okay. And, Byron, I would like you to  
74:6 please pull up a portion of Mr. Winkelmann's  
74:7 testimony, page 157, line 14 through 19. 14  
74:8 through 19, please.

74:9 And the question asked was: "And how  
74:10 would Blue Ocean Portfolios track its advertising  
74:11 spend and its yield?"

74:12 "Answer: Well, we look at the total

74:13 amount of advertising spent for each period,  
74:14 either quarter, per month, and relate that to the  
74:15 new business that came on for that same period."  
74:16 And were you present when Mr. Winkelmann  
74:17 said that?  
74:18 A Yes, I was.  
75:22 Q And what did Mr. Winkelmann say in his  
75:23 testimony about whether or not Blue Ocean  
75:24 Portfolios used different methodologies to  
75:25 calculate the factor that it disclosed to  
76:1 investors?  
76:2 A I don't believe he said different  
76:3 methodologies were used.  
76:4 Q And, Byron, can we please look at Mr.  
76:5 Winkelmann's testimony, page 145, line 25 through  
76:6 146, line 20.  
76:7 And Mr. Winkelmann was asked: "Okay. So  
76:8 I had asked you if there were multiple ways to  
76:9 calculate the factor."  
76:10 "Answer: Yes."  
76:11 Q or "Question: Can you answer that  
76:12 question?"  
76:13 "Answer: Well, you could have a  
76:14 one-month look back, you know, a three-month look  
76:15 back, a one-year look back, a two-year look back."  
76:16 "Question: Can you describe the  
76:17 differences as part of the calculation or the  
76:18 formula?"  
76:19 "Answer: I would think the longer the  
76:20 look back period is, the more reliable the number  
76:21 would be for business planning purposes."  
76:22 "Question: Is the formula that we just  
76:23 talked about earlier, yield equals spending  
76:24 divided by returns, is that the same formula for  
76:25 each of the look back periods that you just  
77:1 described or is there a different formula?"  
77:2 "Answer: It's the same formula. The  
77:3 same methodology. There would just be more data  
77:4 as you look back in time."  
77:5 "Question: So the reliability comes  
77:6 from the amount of data, not a change in the  
77:7 formula?"  
77:8 "Answer: Correct."  
77:9 And you were there when Mr. Winkelmann  
77:10 said that?  
77:11 A Yes, I was.

212. Collins prepared summary exhibit 440, which compares the .22 advertising ratio disclosed in the first offering memorandum to Collins' calculations of the ratio using advertising and revenue data: (1) from January 2010 to March 2011, (2) from January 2011 to March 2011, and (3) for March 2011. (Ex. 440).

86:8 Q Okay. And this is the last time, but  
86:9 can you go back to Exhibit 440, please. And so  
86:10 those columns factor per most recent month, factor  
86:11 most recent three months, factor per most recent  
86:12 15 months. Just remind us, where did you get  
86:13 those numbers from?

86:14 A Yes. Again, that's based on the -- for  
86:15 the most recent month, it would have been the  
86:16 advertising spend for March 2011 divided by the  
86:17 annual recurring revenue for that month. For the  
86:18 most recent three months, it would have been the  
86:19 sum of the advertising spend for those most recent  
86:20 three months divided by the sum of the annual  
86:21 recurring revenue tied to those most recent three  
86:22 months.

86:23 Q And what about most recent 15 months?

86:24 A That's looking back on all the way to  
86:25 2010. So it would have been the sum of the  
87:1 advertising spend from, you know, January 2010  
87:2 through March 2011 divided by the sum of the  
87:3 annual recurring revenue from January 2010 through  
87:4 March 2011.

213. For Exhibit 440, Collins used the 2010 advertising spend and annual revenue data contained on BOP's 2010 Profit and Loss statement, Exhibit 35. The 2010 advertising spend data on Exhibit 35 is consistent with the 2010 advertising spend data on BOP's 2010 "Advertising Transaction Detail by Account" report, which is one of Respondents' trial exhibits (RX-008).

82:1 So do you see for the first row for  
82:2 2010, there's annual revenue numbers and  
82:3 advertising spend numbers?

82:4 A Yes.

82:5 Q And where did you get that information?  
82:6 A That's straight from Blue Ocean's 2010  
82:7 profit and loss statement.  
82:8 Q Okay. And, Byron, can you pull up  
82:9 Exhibit 35, please. And can you just blow up  
82:10 maybe the first third of the page? Great.  
82:11 And is this the profit and loss  
82:12 statement you reviewed?  
82:13 A Yes, it is.  
83:17 And let's look now at another exhibit.  
83:18 This is one of Respondent's exhibits. This is  
83:19 RX008.  
83:20 And can you just blow up maybe the first  
83:21 third of this one, Byron?  
83:22 No, the -- I need the whole thing.  
83:23 Thank you.  
83:24 And what does information is tracked on  
83:25 Exhibit RX008?  
84:1 A That's tracking advertising expenses.  
84:2 Q And what does each line item represent?  
84:3 A That represents a specific advertising  
84:4 expense.  
84:5 Q And when is the first advertising  
84:6 expense listed?  
84:7 A It's January 15th, 2010.  
84:8 Q And when's the next one listed?  
84:9 A February 19th, 2010.  
84:10 Q And the next one?  
84:11 A March 5th, 2010.  
84:12 Q And the next one?  
84:13 A April 9th, 2010.  
84:14 Q Okay. And, Byron, can you pull this  
84:15 back, please? And then go to the lower right  
84:16 or -- yep the lower, right.  
84:17 What's the total advertising expense for  
84:18 2010?  
84:19 A 41,655.  
84:20 Q And how did that compare to the P & L  
84:21 that we just looked at?  
84:22 A It matches.  
84:23 Q And how did it compare to Exhibit 440,  
84:24 the document you prepared?  
84:25 A It matches.

214. For Exhibit 440, Collins used the advertising spending and revenue data for the first three months of 2011 contained in Exhibit 159.

85:1 Q Okay. Let's go back to Exhibit 440,  
85:2 please. And where did you get the advertising  
85:3 spending numbers and the annual revenue numbers  
85:4 for the first three months of 2011?  
85:5 A That's -- those numbers are based on  
85:6 testimony in Exhibit 43.  
85:7 Q And, Byron, can you pull up Exhibit 159.  
85:8 And can you actually just pull up the whole thing  
85:9 so we can see it?  
85:10 What's the testimony exhibit on trial  
85:11 exhibit 159?  
85:12 A 43.  
85:13 Q So are we talking about the same  
85:14 document here?  
85:15 A Yes, we are.  
85:16 Q Okay. And we see an exhibit --  
85:17 testimony exhibit sticker on it. And did Mr.  
85:18 Winkelmann discuss this document in his testimony?  
85:19 A Yes, he did.  
85:20 Q And what did he say the document was  
85:21 used for?  
85:22 A He said it was used to track the -- the  
85:23 factor.

215. Based on the 2010 data contained in BOP's P&L statement and the 2011 data contained in Exhibit 159, Collins calculated BOP's advertising ratio for January 2010 to March 2011 to be 0.37, its ratio for January 2011 to March 2011 to be 0.44, and its ratio for March 2011 to be 0.37. (Ex. 440). When compared to the most conservative of these numbers (0.37), the 0.22 ratio cited in the first offering memorandum was overstated by 67%.

86:8 Q Okay. And this is the last time, but  
86:9 can you go back to Exhibit 440, please. And so  
86:10 those columns factor per most recent month, factor  
86:11 most recent three months, factor per most recent  
86:12 15 months. Just remind us, where did you get  
86:13 those numbers from?  
86:14 A Yes. Again, that's based on the -- for  
86:15 the most recent month, it would have been the

86:16 advertising spend for March 2011 divided by the  
86:17 annual recurring revenue for that month. For the  
86:18 most recent three months, it would have been the  
86:19 sum of the advertising spend for those most recent  
86:20 three months divided by the sum of the annual  
86:21 recurring revenue tied to those most recent three  
86:22 months.

86:23 Q And what about most recent 15 months?

86:24 A That's looking back on all the way to  
86:25 2010. So it would have been the sum of the  
87:1 advertising spend from, you know, January 2010  
87:2 through March 2011 divided by the sum of the  
87:3 annual recurring revenue from January 2010 through  
87:4 March 2011.

87:5 Q And do you see down in red how it says:  
87:6 "Factor overstated in offering memo by 67  
87:7 percent"?

87:8 A Yes, I do.

87:9 Q How did -- where did you get that from?

87:10 A So, again, that's taking the most  
87:11 conservative number; so the .37. It's taking the  
87:12 .37 minus the factor identified in the offering  
87:13 memorandum; so the .22 divided by the .22.

216. Collins prepared summary exhibit 441, which compares the 0.78 advertising ratio for 2011 disclosed in the second, third, and fourth offering memoranda to Collins' calculations of the ratio using BOP's advertising and revenue data for 2011 contained in Exhibit 159. The 2011 total advertising spending amount on Exhibit 159 (\$230,957) is within \$1 dollar of the 2011 yearly advertising spending (\$230,958) contained on (a) Respondents' Exhibit RX-018, a BOP "2011 Advertising Analysis" spreadsheet, and (b) Exhibit 86, a chart breaking down BOP's advertising spending by month and category. (Compare Ex. 159 with RX-018 and Ex. 86).

89:4 Q Okay. And do you see how in the middle  
89:5 column factor per offering memorandum there's a  
89:6 .78?

89:7 A Yes, I do.

89:8 Q And where did you get that number from?

89:9 A That's straight from the offering  
89:10 memorandum.

89:11 Q Which one?

89:12 A That's the second and third.  
89:13 Q Second and third?  
89:14 A Yes.  
90:15 Q Thank you. So I'll read [from RX-002: "Advertising  
90:16 yield factor. This is the key driver of the Blue  
90:17 Ocean Portfolios model. This advertising factor  
90:18 for 2011 was 0.78."  
90:19 And is that where you got the .78 from  
90:20 in Exhibit 441?  
90:21 A That's correct.  
90:15 Q Thank you. So I'll read: "Advertising  
90:16 yield factor. This is the key driver of the Blue  
90:17 Ocean Portfolios model. This advertising factor  
90:18 for 2011 was 0.78."  
90:19 And is that where you got the .78 from  
90:20 in Exhibit 441?  
90:21 A That's correct.

217. In calculating BOP's advertising ratio for 2011, Collins used the same methodology Winkelmann described using in his investigative testimony.

92:16 Q Okay. And when you said in -- well, how  
92:17 did your methodology for calculating the 2011  
92:18 factor of 1.28 compare to how Mr. Winkelmann  
92:19 described his methodology for calculating the 2011  
92:20 factor when he testified?  
92:21 A I believe it was the same.  
92:22 Q And, Byron, can you please pull up Mr.  
92:23 Winkelmann's testimony just so we can see. Page  
92:24 80, line 25 through -- or 180, line 25 through  
92:25 181, line 15.  
93:1 And the question is asked: "Okay. And  
93:2 on that same page that first sentence, the fourth  
93:3 paragraph that reads: 'The key driver to Blue  
93:4 Ocean or to the Blue Ocean Portfolio's model is  
93:5 the efficacy or yield or money spent on  
93:6 advertising,' correct?"  
93:7 "Answer: Correct."  
93:8 "Question: And that's the same key  
93:9 driver as in round one of the offering --  
93:10 offering, correct?"  
93:11 "Answer: Yes. But a year later."  
93:12 "Question: This paragraph goes on to  
93:13 say that in 2011, the factor, in other words, the  
93:14 advertising budget, was .79."

93:15 "Answer: That's what it says."  
93:16 "Question: What is the basis for that  
93:17 figure?"  
93:18 "Answer: I guess we can look back at  
93:19 the -- at that point a year later. We had the  
93:20 entire history of 2011, and we could determine  
93:21 what the factor was."  
93:22 You were there when Mr. Winkelmann  
93:23 testified to that effect?  
93:24 A Yes, I was.

218. Based on the 2011 advertising spending and revenue data contained in Exhibit 159, Collins calculated BOP's 2011 advertising ratio to be 1.28. (Ex. 441). When compared to this figure, the 0.78 ratio in the second, third, and fourth offering memoranda was overstated by 64%. (Ex. 441).

96:1 Q And factor -- in red "factor overstated  
96:2 in offering memo by 64 percent." How did you get  
96:3 that?  
96:4 A So that's taking the 1.28 figure I  
96:5 calculated for the 2011 factor minus the .78  
96:6 that's identified in the offering memoranda  
96:7 divided by the .78.

219. Collins also calculated BOP's advertising factor by including the payments BOP made to Binkholder in 2011 with the advertising spending contained in Exhibit 159. (Ex. 441). Collins determined that including the Binkholder payments results in a 2011 advertising factor of 1.46. Compared to that figure, the 0.78 ratio cited in the second, third and fourth offering memorandum is overstated by 87%. (Ex. 441).

93:25 Q Okay. Exhibit 441, please.  
94:1 And do you see the column all the way  
94:2 over on the right that says: "Factor including  
94:3 Binkholder payments per 2011 data"?  
94:4 A Yes, I do.  
94:5 Q And what does that column represent?  
94:6 A That includes if you also include  
94:7 payments made to Brian Binkholder and factor that  
94:8 into the calculation of the advertising factor.

96:8 Q And including Binkholder payments,  
96:9 factor overstated in offering memo by 87 percent?  
96:10 A Yeah, that would be taking the last  
96:11 column on the far right, the 1.46 number, minus  
96:12 again the number identified in the offering  
96:13 memoranda the .78 divided by the .78.

220. Collins prepared summary exhibit 442, which compares the .62 "current" advertising ratio disclosed in the second offering memorandum to Collins's calculations of the ratio using advertising and revenue data (1) from March 2011 through February 2012, (2) from December 2011 through February 2012, and (3) for February 2012. (Ex. 442).

96:15 And what is Exhibit 442?  
96:16 A That's tied to the second offering  
96:17 memorandum, again represents my calculation of the  
96:18 advertising factor based on Blue Ocean's internal  
96:19 documents.  
96:20 Q And who prepared Exhibit 442?  
96:21 A I did.  
97:4 Q And do you see the -- one of the middle  
97:5 columns it says "factor per offering memo 0.62"?  
97:6 A Yes, I do.  
97:7 Q And where did that come from?  
97:8 A That's straight from the second  
97:9 offerings -- offering memorandum.

221. Collins used the same methodology for Exhibit 442 that he did for Exhibits 440 and 441: BOP's advertising spending for a given period divided by its new recurring revenues generated during that period. In making these calculations, Collins used BOP's 2011 advertising and revenue data contained in Exhibit 159, and used the 2012 data contained in Exhibit 396, p. BO 5639.

97:13 And do you see how in Exhibit 442 there  
97:14 are columns for factor per most recent three  
97:15 months or per most recent month, most recent three  
97:16 months, most recent 12 months?  
97:17 A Yes, I do.  
97:18 Q Okay. And how did you calculate those  
97:19 numbers?

97:20 A Similar to what we discussed before. It  
97:21 would have been -- for the most recent month, it  
97:22 would have been taking the advertising spend. So  
97:23 for here it would have been taking the advertising  
97:24 spend for February 2012 divided by the recurring  
97:25 revenue generated in February 2012. Most recent  
98:1 three months, again, that would have been the sum  
98:2 of the advertising spend for the most recent three  
98:3 months. So December 2011 through February 2012  
98:4 divided by the sum of the annual recurring revenue  
98:5 for December 2011 through February 2012. And then  
98:6 same process for the most recent 12 months, would  
98:7 be just going back 12 months.

98:8 Q Okay. So where did you get the 2011  
98:9 revenue and advertising spend numbers from?

98:10 A That's from testimony Exhibit 43.

98:11 Q And that's the same trial Exhibit 159  
98:12 that we've looked at a few times?

98:13 A That's correct.

99:1 Q And can we look at Exhibit 396, please,  
99:2 and go to page 4. And I am going to need the  
99:3 Bates number too, please. Thank you.

99:4 And is that the same BO5639 we were  
99:5 just -- you just mentioned?

99:6 A Yes, it is.

99:7 Q And that's where you got the January and  
99:8 February 2012 revenue and advertising spend  
99:9 information from?

99:10 A That's correct.

222. Based on Collins' calculations, BOP's advertising ratio was 0.82 for January 2012, 0.90 for February 2012, 0.96 for December 2011 through February 2012, and 1.28 for March 2011 through February 2012. (Ex. 442). Using the most conservative of these numbers (0.90), the 0.62 ratio contained in the second offering memorandum was overstated by 46%. (Ex. 442). If payments to Binkholder had been included, using the most conservative ratio (1.16), the 0.62 ratio was overstated by 87%. (Ex. 442)

100:7 Q Okay. And what are the four columns on  
100:8 the right about the missed -- that mention  
100:9 Binkholder payments?

100:10 A Again, that represents if you

100:11 incorporate payments to Bryan Binkholder as part  
100:12 of the calculation of the advertising factor.  
100:13 Q Okay. And then down in red, "factor  
100:14 overstated in memo by 46 percent." Where did you  
100:15 get that?  
100:16 A Yes. Again, that would have been using  
100:17 the most conservative number. So here we would  
100:18 have used -- I did use .90 minus the .62 divided  
100:19 by the .62.  
100:20 Q And then the one where it says  
100:21 "including Binkholder payments, factor overstated  
100:22 in offering memo by" and that's at 87 percent.  
100:23 How did you get there?  
100:24 A Yeah. Again, using the most  
100:25 conservative number, it would have been using the  
101:1 1.16 in that second to last column on the right.  
101:2 1.16 minus the .62 divided by the .62.

223. Collins prepared summary exhibit 443, which compares the .67 "current" advertising ratio disclosed in the third offering memorandum to Collins's calculations of the ratio using advertising and revenue data (1) from September 2011 through August 2012, (2) from June 2012 through August 2012, and (3) for August 2012. (Ex. 443).

101:3 Q Okay. Exhibit 443, please.  
101:4 And who prepared this document?  
101:5 A I did.  
101:6 Q And was it generally the same exercise  
101:7 you did with some of the other ones we've looked  
101:8 at?  
101:9 A Yes, it was.  
101:19 Q And factor per offering memo, 0.67.  
101:20 Where did you get that from?  
101:21 A Straight from the third offering --  
101:22 offering memorandum.

224. Collins used the same methodology for Exhibit 443 that he did for Exhibits 440, 441, and 442: BOP's advertising spending for a given period divided by its new recurring revenues generated during that period. In making these calculations, Collins used BOP's 2011

advertising and revenue data contained in Exhibit 159, and used the 2012 data contained in Exhibit 396, p. BO 5639.

102:20 Q All right. Back to Exhibit 443, please.  
102:21 And do you see the columns factor per most recent  
102:22 month, most recent three months, most recent 12  
102:23 months?  
102:24 A Yes, I do.  
102:25 Q Okay. And how did you get to those  
103:1 numbers?  
103:2 A Similar -- same process as what we've  
103:3 discussed. For most recent month, it would have  
103:4 been the advertising spend for the most recent  
103:5 month divided by the recurring revenue in most  
103:6 recent month. For the most recent three months,  
103:7 again, it would have been the sum of the  
103:8 advertising spend for the most recent  
103:9 three months divided by the sum of the annual  
103:10 recurring revenue for most recent three months.  
103:11 And again, same process going back for the most  
103:12 recent 12 months.  
103:13 Q And where did you get the 2011 revenue  
103:14 and advertising spend data?  
103:15 A From testimony Exhibit 43.  
103:16 Q And where did you get the 2012 annual or  
103:17 revenue and spending numbers?  
103:18 A From BO5639.

225. Based on Collins' calculations, BOP's advertising ratio was 1.02 for August 2012, 0.77 for June 2012 through August 2012, and 1.02 for September 2011 through August 2012. (Ex. 443). Using the most conservative of these numbers (0.77), the 0.67 ratio contained in the third offering memorandum was overstated by 14%. (Ex. 443). If payments to Binkholder had been included, using the most conservative ratio (1.19), the 0.67 ratio was overstated by 78%. (Ex. 443)

104:2 Q And Binkholder columns, I assume is  
104:3 there any difference in methodology than the other  
104:4 exhibits -- summary exhibits we've talked about?  
104:5 A No difference.  
104:6 Q Okay. And factor overstated in offering

104:7 memo by 14 percent? How did you get there?  
104:8 A Again, it would have been using the most  
104:9 conservative numbers. So here I used .77 minus  
104:10 .67, what was identified in the offering  
104:11 memorandum, divided by the .67.  
104:12 Q And how did you get to the 78 percent  
104:13 for the -- including Binkholder payments?  
104:14 A Would have been taken the lowest number,  
104:15 the 1.19 minus the .67 divided by .60.

226. Collins prepared summary exhibit 444, which compares the 0.89 advertising ratio for 2012 disclosed in the fourth offering memoranda to Collins's calculations of the ratio using BOP's advertising and revenue data for 2012 contained in Exhibit 396, p. BO 5639.

104:16 Q Okay. Exhibit 444, please.  
104:17 And did you prepare this document?  
104:18 A Yes, I did.  
104:19 Q And was this the -- just to save time,  
104:20 is this the same exercise for the fourth offering  
104:21 memorandum?  
105:5 Q Thank you. And where did you get the  
105:6 0.89 factor per offering memo?  
105:7 A That was straight from the fourth  
105:8 offerings -- offering memorandum.  
106:3 Q Exhibit 444, please.  
106:4 And where did you get the 2012 revenue  
106:5 and advertising spend numbers?  
106:6 A Based on BO5639.

227. Using the data on Exhibit 396, p. BO 5639, Collins divided BOP's 2012 advertising spending by its new recurring revenue for that year, which calculates to an advertising ratio of 1.02. (Ex. 444). Compared to this figure, the 0.89 ratio for 2012 in the fourth offering memorandum is overstated by 14%. (Ex. 444). If the 2012 BOP payments to Binkholder are included, the 0.89 ratio for 2012 is overstated by 51%. (Ex. 444).

106:24 Q Thank you. And then back to Exhibit 444  
106:25 for the last time. And how did you calculate the  
107:1 factor for 2012, the 1.02 factor?  
107:2 A That's the sum of the advertising spend  
107:3 for -- for all of 2012 divided by the -- the

107:4 annual revenue for all of 2012.  
107:5 Q And again, how did your methodology  
107:6 compare to the methodology that Mr. Winkelmann  
107:7 described in his testimony?  
107:8 A I believe it was the same.  
107:9 Q And what are the Binkholder columns  
107:10 about in Exhibit 444?  
107:11 A Again, similar to what we discussed  
107:12 before. It's if you incorporate payments to Bryan  
107:13 Binkholder as part of the determination of the  
107:14 advertising factor.  
107:15 Q Okay. And did you use the same  
107:16 methodology for determining the factor over  
107:17 statement amounts?  
107:18 A Yes, I did.

228. Collins prepared summary exhibit 454, which compared the moneys repaid to a first round royalty unit investor as of August 1, 2012 (\$2,671.98), with the amount Winkelmann represented had been repaid in an August 1, 2012 email (Ex. 167) to potential investor Mark Funfsinn (\$4,691.95). (Ex. 454).

108:9 Q And do you see the first of the two  
108:10 tables?  
108:11 A Yes, I do.  
108:12 Q Where you talk about potential investor  
108:13 and date of an email and an amount.  
108:14 A Yep.  
108:15 Q Where did that information come from?  
108:16 A BO2800.  
108:17 Q Okay. And are you referencing an August  
108:18 1st, 2012, email to a Mark or an  
108:19 [REDACTED]  
108:20 A Yes, I am.  
108:21 Q Can we look at Exhibit 167, please. And  
108:22 can you blow that up?  
108:23 Is that the exhibit -- the email you  
108:24 looked at?  
108:25 A Yes, it is.  
109:1 Q Okay. And the largest paragraph near  
109:2 the bottom beginning with "our business is  
109:3 growing." And that's an email -- whose that email  
109:4 from?  
109:5 A That's from Mr. Winkelmann.

109:6 Q Okay.  
109:7 And if you could just go back to the  
109:8 text, Byron. Blow up that paragraph, please.  
109:9 "Our business has been growing 15  
109:10 percent per quarter. Current asset base is right  
109:11 at 82,500,000. In order to fund our growth, we  
109:12 are planning to expand into the Chicago market in  
109:13 September and will be offering 26 Royalty Units  
109:14 (\$25,000)." I think the letters are EA there.  
109:15 "Similar units issued last year have paid back the  
109:16 outside investors \$4,961.95 so far."  
109:21 Q And is the \$4,961.95, did that number  
109:22 come from Exhibit 167 that we just looked at?  
109:23 A Yes, it did.

229. In calculating the actual amounts repaid to investors, Collins relied on a repayment schedule, produced by BOP, for Lori Artinger-Garland, one of the initial first round investors. (Compare Ex. 454 with Ex. 315). Based on Collins's calculations, in Winkelmann's August 1, 2012 email to Funfsinn, Winkelmann overstated by 86% the amount first round investors had been repaid to date. (Ex. 454)

109:24 Q Okay. And what is the next -- what's  
109:25 the next table down?  
110:1 A That's essentially summarizing, I think,  
110:2 what a given Royalty Unit one investor actually  
110:3 had been paid back.  
110:4 Q And what does the bottom table  
110:5 represent?  
110:6 A That's simply the difference between  
110:7 what was claimed to have been paid back versus  
110:8 what was actually paid back.  
110:9 Q Claimed by who?  
110:10 A Claimed by Blue Ocean.

230. Collins prepared summary Exhibit 455, which displays, for each royalty unit investor: (1) the investor's name, (2) whether or not the investor was a BOP client, (3) their state of residency, (4) the number of units purchased and for which offering, (5) the total dollar

amount of the royalty unit purchase, and (6) the date of the royalty unit purchase (based on each investor's subscription documents).

110:13 And Exhibit 455, I believe, is in  
110:14 evidence per stipulation.  
110:15 And basically just tell us what each  
110:16 column in this summary exhibit represents.  
110:17 A Yeah, so it's a summary of the investors  
110:18 in the different offerings. So you have the name  
110:19 of the investor, state of residency, whether or  
110:20 not they're a client, units purchased, total  
110:21 purchase amount, date purchased, base number  
110:22 support for that data purchase, units purchased in  
110:23 cumulative per offering, amount raised cumulative  
110:24 per offering, amount raised cumulative.  
110:25 Q And do you break this -- it looks like  
111:1 you're just breaking this out into each of the  
111:2 four offerings.  
111:3 A That's correct.

231. Most of the information Collins used to prepare Exhibit 455 is contained on Ex. 269, a BOP list of the royalty unit holders with the amount of their royalty unit purchases.

111:4 Q And where did most of this information  
111:5 come from?  
111:6 A From testimony Exhibit 72.  
111:7 Q And can we just look at Exhibit -- trial  
111:8 Exhibit 269, please.  
111:9 And what's the testimony number on there  
111:10 in the corner?  
111:11 A 72.  
111:12 Q So we're talking about the same  
111:13 document?  
111:14 A Yes.  
111:15 Q And then, Byron, can you go to the  
111:16 second page, please? And blow that up.  
111:17 And is this where you got information in  
111:18 Exhibit 455 for columns name, client, units  
111:19 purchased, and total purchase amount?  
111:20 A Yes, it is.

232. Collins prepared summary exhibit 457, which documents payments made from BOP to two of Winkelmann's other companies: Longrow Insurance Agency and Blue Ocean

ATM. Collins prepared Exhibit 457 using BOP bank statements and checks. The bank statements and checks reflect that, between August 24, 2011 and March 30, 2012, BOP transferred \$41,000 to Longrow Insurance Agency. (Ex. 457). Between October 28, 2011 and September 14, 2012, BOP transferred \$46,007 to Blue Ocean ATM. (Ex. 457).

111:21 Q Exhibit 457, please.  
111:22 What is Exhibit 457?  
111:23 A That summarizes payments to the related  
111:24 companies of Mr. Winkelmann and Blue Ocean.  
111:25 Q And what are the two companies listed in  
112:1 the pay to the order of column?  
112:2 A Longrow Insurance Agency and Blue Ocean  
112:3 ATM.  
112:4 Q And where did you get the data for  
112:5 Exhibit 457?  
112:6 A It was from reviewing US Bank and  
112:7 Enterprise Bank statements or checks.  
112:16 And before we get there, just what's the  
112:17 total amount transferred to Longrow Insurance  
112:18 Agency and Blue Ocean ATM from August 24th, 2011,  
112:19 to September 14th, 2012?  
112:20 A \$87,000 and -- \$80,007.  
112:21 Q And where was that money transferred  
112:22 from?  
112:23 A From Blue Ocean.  
112:24 Q Blue Ocean Portfolios?  
112:25 A Correct.

233. Collins prepared summary exhibit 448, which reflects payments made by BOP to a first round royalty unit investor between April 2011 and August 2014. Based on BOP's records, from April 2011 to June 2012, BOP would pay royalty holders the minimum 0.25% percentage every third month, when BOP received its management fees and its revenues were large. (Ex. 315; Ex. 488). During that period, during the intervening two months, when BOP's revenues were much lower, Winkelmann increased the monthly payout to 0.75%. (Ex. 315; Ex. 488). From July 2012 through August 2014, Winkelmann kept the payout to the 0.25% minimum. (Ex. 315; Ex. 488).

117:9 And what's Exhibit 448?  
117:10 A That is support for the amounts paid per  
117:11 Royalty Unit sold pursuant to offering one through  
117:12 August 2014.  
117:13 Q And where did this data come from?  
117:14 A Testimony in Exhibit 59.  
117:15 Q And, Byron, can you pull up Exhibit 315,  
117:16 please.  
117:17 And you see testimony Exhibit 59 is  
117:18 trial Exhibit 315?  
117:19 A Yes.  
117:20 Q So we're talking about the same  
117:21 document?  
117:22 A Yes, we are.  
117:23 Q And, Byron, can you maybe blow up the  
117:24 first half of this down through July 2012?  
117:25 And is this where you got the  
118:1 information that put into Exhibit 448?  
118:2 A Yes, it is.  
118:3 Q And I'd like you to look at the months  
118:4 where the monthly royalty percentage was 0.75  
118:5 percent.  
118:6 A I see it.  
118:7 Q And how did the revenue in those 0.75  
118:8 months compared to the revenue for the .25 months?  
118:9 A The revenue was much lower.

234. Collins prepared summary exhibit 461, which reflects, between January 2011 and August 2014, the increase over time for: (1) Winkelmann's total compensation (including the payments to Longrow Insurance Agency and Blue Ocean ATM); (2) Winkelmann's compensation excluding the Longrow and Blue Ocean ATM payments; (3) the payments to Longrow and Blue Ocean ATM; and (4) the payments for a single first round royalty unit.

119:25 What is Exhibit 461?  
120:1 A It's a graphical representation of the  
120:2 prior exhibits that shows essentially a comparison  
120:3 of Mr. Winkelmann's total compensation, including  
120:4 related company payments, to the amounts paid per  
120:5 Royalty Unit sold for offering number one.  
120:6 Q Okay. So let's just make sure for the  
120:7 record that we have a clear -- what's the bottom  
120:8 line that's in purple on the screen?

120:9 A Yeah, that's the amounts paid per  
120:10 Royalty Units sold pursuant to offering one.  
120:11 Q And what's the red line that's the  
120:12 second line from the bottom?  
120:13 A That represents payments to Mr.  
120:14 Winkelmann's related companies.  
120:15 Q And what is the blue line which is the  
120:16 second line from the top?  
120:17 A That represents Mr. Winkelmann's  
120:18 compensation excluding payments to his related  
120:19 companies.  
120:20 Q And what is the green line, the line on  
120:21 the top?  
120:22 A That represents the total compensation  
120:23 including payments to related companies.

### III. Jennifer Juris Testimony

235. Jennifer Juris (formerly Elbert) first worked at BOP over the summer of 2011, and became a full-time employee after graduating college in December 2011.

857:14 Q And, Ms. Juris, just for the record and  
857:15 this case is clear, have you always been Jennifer  
857:16 Juris?  
857:17 A No. I was married in June 20th, 2015,  
857:18 and prior to that I was Jennifer Elbert.  
858:8 Q And at one time did you work for Blue  
858:9 Ocean Portfolios?  
858:10 A Yes. I first became employed by Blue  
858:11 Ocean Portfolios in June of 2011, from June to  
858:12 August. It was treated as a summer internship to  
858:13 just gain exposure before my last -- my last  
858:14 semester of college. And then upon graduating in  
858:15 December of 2011, I moved back and began  
858:16 employment in December of 2011 with Blue Ocean  
858:17 Portfolios through November of 2015.

236. Juris had not started working at BOP at the time of the first royalty unit offering, and she never reviewed the first round offering memorandum.

937:16 Q So let's change gears. You weren't even  
937:17 a Blue Ocean employee at the time of the first  
937:18 Royalty Unit offering, correct?  
937:19 A Right.

940:4 Q And when you worked at Blue Ocean  
940:5 Portfolios in the summer of 2011, you weren't even  
940:6 aware that the company offered Royalty Units,  
940:7 right?

940:8 A No, I was not aware.

940:9 Q Okay.

940:10 A That's correct. Sorry.

940:11 Q And that summer of 2011, you didn't  
940:12 review any offering memorandum, correct?

940:13 A No, I did not review.

940:14 Q You didn't review an offering  
940:15 memorandum?

940:16 A Correct.

940:17 Q Okay. And that summer you were never  
940:18 asked to go back and review the offering

940:19 memorandum for accuracy, correct?

940:20 A No. Correct.

237. One of Juris's responsibilities at BOP was to monitor and analyze its advertising spending and results.

863:12 Q And in that process you just described,  
863:13 what was your role specifically?

863:14 A Uh-huh. So we had a tracking sheet,  
863:15 kind of a master sheet that we compiled. And when  
863:16 new leads were obtained, we entered them into the  
863:17 sheet. We put where they came from, we tracked if  
863:18 they had come in for an initial appointment, and  
863:19 then we tracked if they became clients.

863:20 And my role was to also update that, but  
863:21 then I also generated the monthly reports that  
863:22 then we would sit down in a management meeting and  
863:23 review on a monthly basis to say okay -- you know,  
863:24 if we're sitting down in March, we'll look and say  
863:25 okay, what happened in February? How many leads  
864:1 did we have come in? How many appointments did we  
864:2 have? You know, how many people signed up, you  
864:3 know, and became clients? You know, how many  
864:4 dollars were transferred under our management? So  
864:5 we could do that on a monthly basis.

864:6 Q And how much of your time, given all  
864:7 your different duties at the firm, how much of  
864:8 your time was devoted to something to relating to  
864:9 the advertising campaign?

864:10 A A large portion.

238. One of the documents that Juris maintained at BOP was an "master tracking sheet," which recorded, among other things, the date when a client heard a piece of advertising, when a client transferred funds for BOP to manage, and the size of the clients account at the time it was transferred to BOP. (RX-006).

865:7 Q Can you just explain what this is?

865:8 A Sure. This is, when I referred to kind  
865:9 of the master tracking sheet, that's what this  
865:10 document is. You can see it just has the clients'  
865:11 or leads' names. So if someone had called us, we  
865:12 would put their name in there. You know,  
865:13 ultimately once we had multiple offices, we  
865:14 tracked what office they related to. If we  
865:15 assigned them to a rep, the date, where they came  
865:16 from. And then the appointment -- appointment  
865:17 date, client, and the client since, those wouldn't  
865:18 have been updated until one, they came in for an  
865:19 appointment. We would go back, find their record  
865:20 in the spreadsheet, search for them, and put in  
865:21 the date that they came in for the appointment.  
865:22 And then whenever they had signed paperwork, we  
865:23 would have a similar process that we would go back  
865:24 here and put in, you know, we would change them  
865:25 from no, they aren't a client to yes, put the date  
866:1 and then the assets.

867:13 Q And the next -- the next -- there are  
867:14 two columns over, I guess. It says client since  
867:15 and that has a different day. And why is that a  
867:16 different day?

867:17 A Correct. Because sometimes people came  
867:18 in for the appointments and sometimes they would  
867:19 sign paperwork immediately on the spot. That  
867:20 would be great -- ideal. Sometimes people would  
867:21 think about it and call us back and say, "Yes, I  
867:22 want to move forward." Sometimes we would provide  
867:23 them the appropriate forms and then they wouldn't  
867:24 return them to us. You know, they would wait and  
867:25 sit and decide. You would see all different kinds  
868:1 of timing instances occur. But the client since  
868:2 date was the date they became a client, was the  
868:3 date ultimately they signed the paper.

868:4 Q And what about the approximate value

868:5 column? What does that represent?  
868:6 A Yes. The approximate value is the value  
868:7 of their assets that we would have known at them  
868:8 signing the paperwork. So we would have had  
868:9 copies of recent statements from the client. We  
868:10 would have added them up. You know, obviously the  
868:11 title is approximate value. Those were  
868:12 approximate amounts. You know, we would round to  
868:13 the nearest thousand of how much they had in  
868:14 assets when they signed the paperwork that were  
868:15 going to be coming under our management.

239. Juris also maintained an advertising spending report, which tracked (a) advertising spending for certain months, (b) the amount of new AUM generated *as a result of* a given months' advertising, and (c) the amount of new AUM generated *during* a given month of advertising. (RX-036).

873:8 Q And the next column to the right is  
873:9 titled advertising costs. What -- what  
873:10 advertising costs does that refer to?  
873:11 A Yes. So the advertising costs that went  
873:12 in this, the initial value was pulled from a  
873:13 QuickBooks report. Again, this is my handwriting  
873:14 on here and I created that document that I would  
873:15 have had to request, you know, an advertising  
873:16 report generated from QuickBooks from Kelly and we  
873:17 would have that -- that figure.  
876:24 Q This is the middle chart on the page.  
876:25 A Uh-huh.  
877:1 Q It has the same, most of the same  
877:2 headers. Can you explain what is different about  
877:3 this one versus the one on top?  
877:4 A Sure. So this one is different because  
877:5 this one is looking solely at how many  
877:6 appointments came in to our office during that  
877:7 month to meet with us; so it doesn't care when  
877:8 they first became a lead. They first could have  
877:9 been a lead in 2010, December of 2011, it could  
877:10 have -- they could have first been a lead in  
877:11 February of 2012. But this tracking metric  
877:12 doesn't -- doesn't care about that. It's saying  
877:13 solely of people that came into our office this  
877:14 month, you know, how many was that. And then the

877:15 next column, then, is how many of those did we  
877:16 close, how many became clients. It doesn't care  
877:17 when they first became a lead or first raised  
877:18 their hand to the company.

942:21 Q And I believe the top chart calculates  
942:22 advertising efficiency by looking at advertising  
942:23 for a particular period divided by new recurring  
942:24 revenue that resulted from that period of  
942:25 advertising, correct?

943:1 A Yes.

943:2 Q So for February 2012, that \$8,400 --  
943:3 \$840,000, that wouldn't be money that came in  
943:4 necessarily during February. It would be money  
943:5 that came in that was tied to the February  
943:6 advertising, correct?

943:7 A That is correct.

944:24 So I think I have this correct.

944:25 For a client who hears a piece of advertising in  
945:1 November 2011 --

945:2 A Yes.

945:3 Q -- but doesn't come in and sign the  
945:4 paperwork until February 2012 --

945:5 A Yes.

945:6 Q -- the top chart would put that client's  
945:7 revenue in November 2011, right?

945:8 A That is correct.

945:9 Q And the bottom chart would put that  
945:10 client's revenue into February 2012, correct?

945:11 A That is correct.

240. Exhibit RX-036 is an advertising spending report for February 2012. It was created during the first week of March 2012, and was the most recent report available at the time of the second offering memorandum. That report calculated the advertising factor for any given month by dividing the advertising expenses for the month by the amount of recurring annual revenues from new AUM generated *during* that month. The report determined the amount of annual revenues by multiplying the new AUM generated in a given month by 0.01.

872:25 Q What time period does this chart offer?

873:1 A So this chart is showing November 2011  
873:2 data through February. And then it appears that  
873:3 we had also then in the beginning of March, just

873:4 updated the formulas to begin pulling March data:  
873:5 Although this would have been created, you know,  
873:6 the first week or so of March that way; so that's  
873:7 why there's -- it's really a February report.

878:2 Q And can you tell us how is that number  
878:3 computed?

878:4 A That number is computed --

878:5 Q Computed.

878:6 A I'm following you.

878:7 Q Just go ahead.

878:8 A Calculated -- that number is pulling the  
878:9 advertising costs from up in the first section,  
878:10 the advertising costs, and it's dividing it by the  
878:11 estimated first year revenues in 2012 which is in  
878:12 that bottom section right before the factor. So  
878:13 it's looking at how much we spent for how much  
878:14 we're receiving in revenues.

878:15 Q Okay. So you're taking the number in  
878:16 the top -- in the top chart on the left column,  
878:17 advertising costs, and dividing it by the sum of  
878:18 the estimated first year revenue down there in the  
878:19 bottom right?

878:20 A Correct.

879:2 Q Okay. And how do you calculate from the  
879:3 thing Alan has highlighted, the new AUM from  
879:4 clients signed during this month, how do you  
879:5 calculate the estimated first year revenue for  
879:6 2012?

879:7 A It's 1 percent. It's assuming 1 percent  
879:8 management fee. So it's taking those values and  
879:9 multiplying it by the 1 percent and then  
879:10 calculating the factor off of it.

879:11 Q So just for an example, February of  
879:12 2012, the new AUM is \$2,200,000; the February 2012  
879:13 estimated first year revenues would be \$22,000.

879:14 That's 1 percent?

879:15 A Correct.

912:2 So if the firm was preparing the  
912:3 offering memorandum in March of 2012, which  
912:4 reports would it have available to it?

912:5 A It would have had the February report  
912:6 available.

912:7 Q What about January?

912:8 A It would have had January, any prior  
912:9 months. February would have been the last month  
912:10 it had available.

912:11 Q And what about March?  
912:12 A The March report was generated the first  
912:13 week of April; therefore, this would not have been  
912:14 available.

241. Juris also testified that the advertising ratios in RX-036 were calculated by assuming that BOP earned 1% management fees off its assets under management. She agreed that this assumption was inconsistent with the disclosure in the first memorandum that BOP generated 0.8% fees of its AUM. Had BOP used a 0.8% assumption in RX-036, the February 2012 ratio would have been 0.84. (RX-036: \$14,804 February advertising expense divided by \$17,600 (\$17,600 = \$2.2 million AUM generated in February 2012 times 0.008)).

937:20 Q But you were able to testify about the 1  
937:21 percent asset under management assumption that  
937:22 Blue Ocean Portfolios was using at the time of  
937:23 that Royalty Unit offering, correct?

937:24 A Yes.

937:25 Q Okay. Byron, can we look at RX1 please,  
938:1 page 5, third paragraph. Blow that up.

938:2 And this is the first offering  
938:3 memorandum. And it says, "So each 1 million in  
938:4 AUM generates roughly \$8,000 in new annually  
938:5 recurring revenues." Do you see that?

938:6 A I do see that.

938:7 Q And that is not consistent with a 1  
938:8 percent management fee, right?

938:9 A Correct.

938:10 Q That's consistent with a .8 percent  
938:11 management fee, right?

938:12 A That's what that -- yes.

938:13 Q And so to the extent at the time of the  
938:14 first offering memorandum Blue Ocean Portfolios  
938:15 was using a 1 percent assumption instead of a .8  
938:16 percent assumption, that's going to overstate the  
938:17 new annually recurring revenue part of the factor  
938:18 calculation, correct?

938:19 A State that again, sorry.

938:20 Q Okay. So if the denominator in the  
938:21 factor calculation is based on new annually  
938:22 recurring revenue, right?

938:23 A Yes.

938:24 Q And the new annually recurring revenue  
938:25 is based on a 1 percent assumption.  
939:1 A Yes.  
939:2 Q Right? If in reality Blue Ocean  
939:3 Portfolios should have been using a .8 percent  
939:4 assumption that we see that's disclosing to  
939:5 investors here --  
939:6 A Yes.  
939:7 Q -- that means Blue Ocean Portfolios  
939:8 using the .1 or, I'm sorry, using the 1 percent  
939:9 assumption is overstating the revenue piece of the  
939:10 factor calculation, right?  
939:11 A That would increase the revenue.  
939:12 Q Right. And so that means the factor  
939:13 would be overstated if it's using the 1 percent  
939:14 assumption as opposed to the .8 percent  
939:15 assumption, correct?  
939:16 A The number would be lower with a higher  
939:17 denominator.  
939:18 Q Right. And a lower factor means better  
939:19 use of advertising dollars, right?  
939:20 A That is correct.

242. For the February 2012 report, the advertising factor (based on revenues generated during the month of advertising) for February 2012 was 0.67, for January 2012 it was 0.74, for December 2011 it was 1.02, and for November 2011 it was 1.45. (RX-036).

945:24 So can we agree that the factor cited in  
945:25 Exhibit 36 corresponds to the bottom or the middle  
946:1 chart which is when the client signed the  
946:2 paperwork, right?  
946:3 A That is correct. That's what the factor  
946:4 is calculating.  
946:5 Q It does not calculate the factor based  
946:6 off of when the client heard the advertising,  
946:7 correct?  
946:8 A That's correct.

243. Juris testified that had BOP calculated the February 2012 monthly factor using revenues *resulting* from February 2012 advertising, the factor would have been 1.76.

948:2 Q Okay. And are you aware that Mr.  
948:3 Winkelmann a couple days ago testified that when

948:4 he originally told the SEC that he was using the  
948:5 methodology from the middle chart, he was wrong  
948:6 and that in reality he was using the methodology  
948:7 from the top chart? Were you aware of that?

948:8 A I'm not aware of his testimony.

948:9 Q Okay. And can we agree that based on  
948:10 Exhibit RX36 which looks to be how Blue Ocean was  
948:11 calculating the factor in March 2012, if we use  
948:12 the top chart, it's going to result in a much,  
948:13 much higher factor?

948:14 A That is correct.

948:15 Q And let's actually do the math. What is  
948:16 \$14,804 divided by \$8,400? And that's using the  
948:17 .1 assumption, right?

948:18 A 14,804 you said divided by the 8,400?

948:19 Q Yes. And that's the .1 assumption,  
948:20 right?

948:21 A That is 1.76.

244. The June 2012 report contained a chart that showed BOP's monthly factor from January 2011 through June 2012. (RX-054, p. 58). That chart was printed from an Excel spreadsheet in July 2012, and is the same document as Division Exhibit 159. (*Id.*; Ex. 159).

919:9 And so can you tell looking at  
919:10 this document within RX54 about when page 58 would  
919:11 have been printed off?

919:12 A This would have been in the beginning of  
919:13 July of 2012.

919:22 Q Okay. And just really quickly, let's  
919:23 compare this to what's been marked as CX159. I'm  
919:24 sorry, Division exhibit.

919:25 And zoom in. Okay.

920:1 And is this the same document that  
920:2 appeared at RX54, page 58?

920:3 A It is the same.

920:4 Q Okay. I have a couple questions for you  
920:5 on this page. So I think you said -- correct me  
920:6 if I'm wrong -- these numbers are current as of  
920:7 the date of the report which was for June  
920:8 generated in July of 2012; is that right?

920:9 A That is correct.

950:23 Q And [Exhibit 159] is a printout from an Excel  
950:24 spreadsheet, right?

950:25 A Yes.

951:1 Q And I think you just said Blue Ocean  
951:2 would use spreadsheets such as Exhibit 159 to  
951:3 support its advertising factor calculation?  
951:4 A Yes.

245. Juris testified that Exhibit 159 calculated the factor by dividing advertising spending for a period divided by new recurring revenue generated *during* that period.

950:23 Q And RX59 is a printout from an Excel  
950:24 spreadsheet, right?

950:25 A Yes.

951:1 Q And I think you just said Blue Ocean  
951:2 would use spreadsheets such as Exhibit 159 to  
951:3 support its advertising factor calculation?

951:4 A Yes.

951:5 Q And the numbers in it are the result of  
951:6 a formula. I believe you testified to that  
951:7 effect?

951:8 A Yes.

951:9 Q And to get the factor, it's just  
951:10 advertising spend for a period divided by annual  
951:11 revenue in a period?

951:12 A Yes.

951:13 Q And the revenue, annual revenue piece,  
951:14 that's from the method of when the client signed  
951:15 the paperwork as opposed to when the original lead  
951:16 was generated, correct? That's what you testified  
951:17 to earlier?

951:18 A Sign the paperwork -- state that one  
951:19 more time.

951:20 Q Okay.

951:21 A Sorry. I'm just trying to follow  
951:22 without seeing the documents.

951:23 Q Yeah, yeah. I'm sorry. So remember how  
951:24 I was just talking about the distinction about the  
951:25 two ways you could do the factor, which is either  
952:1 revenue tied to the period of the lead or revenue  
952:2 tied to when the client signed the paperwork?

952:3 A Yes.

952:4 Q And I believe you testified this morning  
952:5 that the revenue, annual revenue piece of Exhibit  
952:6 159 was the when the client signed the paperwork,  
952:7 right?

952:8 A Yes.

246. Juris testified that for Exhibit 159, in March 2011 BOP would have had access to the January 2011 advertising and revenue data contained on the exhibit. She also testified that the entirety of the data on Exhibit 159 would have been available to Winkelmann when BOP was preparing the third offering memorandum.

923:23 Q Okay. And in, you know, early to mid  
923:24 March of 2011, would the January data have been  
923:25 available to the firm in terms of new revenue and  
924:1 advertising spend?

924:2 A Yes.

924:14 Q Sure. The question was, in early to mid  
924:15 March of 2011, would the Blue Ocean, as far as you  
924:16 know, have had access to the January numbers?

924:17 A Yes.

953:6 Q Right. But Exhibit 159 had the most  
953:7 recent and best data that Blue Ocean had available  
953:8 as of July 2012, right?

953:9 A This is what we were looking at in July  
953:10 of 2012, yes.

953:11 Q Okay. So if Mr. Winkelmann wanted to,  
953:12 he could have used the data on Exhibit 159 for the  
953:13 third offering memorandum, correct?

953:14 A Yes.

247. By July 2012, BOP had revised its advertising spending report. (RX-54, p. 63 of PDF). The July 2012 report was generated in early August 2012, and was available to BOP when the third round offering memorandum was being prepared.

898:6 Can you go back to a full screen? And  
898:7 go back to [RX-054], page 63.

898:8 Okay. Can you tell what month this  
898:9 report is for?

898:10 A This report would have been for the July  
898:11 of 2012.

898:12 Q And how can you tell this is for July?

898:13 A Because the last column happens to be  
898:14 July 2012 data.

898:15 Q And when would this report have been  
898:16 generated?

898:17 A We would have generated this in early  
898:18 August.

913:16 Q Sorry. I think I meant -- I think I  
913:17 missed an entire month of the year. So if it's --  
913:18 if the memo is dated September 1st and the firm  
913:19 was preparing the memo sometime in August, I  
913:20 apologize, what reports would it have had  
913:21 available to it?  
913:22 A We would have had July reports  
913:23 available.

248. The July 2012 report, like the February 2012 report, tracked (a) advertising spending for certain months, (b) the amount of new AUM generated *as a result of* a given month's advertising, and (c) the amount of new AUM generated *during* a given month of advertising. (RX-054, p. 63 (JW 5480)). The July 2012 report calculated the monthly factor in the same way the February report did: advertising spending for a month divided by anticipated new annual revenues generated during that month. (*Id.*). That report also included "trailing 6-month" factors, which were calculated by dividing advertising spending over the prior six months by the new annual revenues generated during that time period. (*Id.*).

900:4 Q And then I'm going to refer to this as  
900:5 the first set of rows. Do you see there's a set  
900:6 of rows that's titled "from this month's leads"?  
900:7 A Correct.  
900:8 Q And what is that set of rows reflecting?  
900:9 A That is reflecting that first section on  
900:10 the prior months so that it would attribute any  
900:11 data or any clients or appointments and it would  
900:12 go back and assign those dollars or those numbers  
900:13 to when they first became a lead to us.  
900:14 Q So this first set of rows which Alan has  
900:15 highlighted, rough equivalent of the monthly  
900:16 charts we looked at previously for January and  
900:17 February?  
900:18 A Correct.  
900:19 Q Okay. How about the next set of rows --  
900:20 the next set of rows is titled "from any month's  
900:21 leads"?  
900:22 A Correct. So that next section didn't  
900:23 care when they first became a lead. It was purely  
900:24 just people that came in for an appointment during

900:25 that month.  
901:1 Q "That month" being July of 2012?  
901:2 A Correct.  
901:3 Q And then the final set of rows has no  
901:4 title, but can you tell us what that is?  
901:5 A Correct. That is just calculating the  
901:6 cost per lead, the client, and then the estimated  
901:7 first-year revenues which was being calculated  
901:8 from the new AUM from clients signed in the month.  
901:9 Q And --  
901:10 A Which was the same way the factor was  
901:11 being calculated on the prior months.  
901:12 Q And if you look at underneath the chart,  
901:13 there's some -- some new data. There's something  
901:14 called trailing six months factor; do you see  
901:15 that?  
901:16 A Correct.  
901:17 Q And what does that reflect?  
901:18 A As it states it's the trailing six  
901:19 months that we had as we began these reports.  
901:20 Then we had more and more information; so we were  
901:21 able to analyze it over a period of time. So  
901:22 instead of looking at just one month which may not  
901:23 be the best representation of the data, we wanted  
901:24 to look at it from a trailing perspective.  
901:25 Q And can you tell us how that factor is  
902:1 computed?  
902:2 A Sure. That factor there, the average  
902:3 factor, is purely just the average of the factors  
902:4 from, I guess, January 2012 through June of 2012.  
902:5 Q And then just -- just to talk about  
902:6 everything, what would be the geographic -- how  
902:7 would you compute the geometric mean factor?  
902:8 A The geometric mean factor was an Excel  
902:9 function that was equal to geo mean and then it  
902:10 had the data.  
902:16 JUDGE PATIL: What's the difference  
902:17 between the average factor and the geometric mean  
902:18 factor?  
902:19 THE WITNESS: The average factor was  
902:20 just the sum of the numbers divided by six, the  
902:21 six months, and then the geometric mean has a much  
902:22 more complicated way of calculating what the mean  
902:23 is. To be honest, I can't spit out what that  
902:24 calculation is right now, but I know that using  
902:25 the Excel function is the most efficient use of my

903:1 time to come up with that number.

249. For the July 2012 report, the factor for July 2012 was 3.0; the trailing 6-month "average" factor was 0.71; and the trailing 6-month "geometric mean" factor was 0.69. (RX-54, p. 63). Winkelmann did not include any of these factors in the third offering memorandum; in which BOP represented that the advertising factor was 0.67. (RX-003 at BO7487 & 7495.)

250. For the August 2012 advertising report, BOP listed 3 monthly factors (using three different methodologies) as well as trailing 6 and 9 month factors for each of those methodologies and a trailing 12 month factor for one methodology. (Ex. 176).

965:9 Q And beyond Exhibit -- beyond the  
965:10 spreadsheet such as Exhibit 159 and Exhibit 163,  
965:11 Blue Ocean Portfolios would create other types of  
965:12 reports that analyzed Blue Ocean's advertising  
965:13 efficiency, right?

965:14 A I don't know specifically what other  
965:15 reports, but we had data that we would -- could  
965:16 calculate a factor from. But I don't know  
965:17 specifically what you mean by "other reports."

965:18 Q Okay. Well, let's look at Exhibit 176.  
965:19 Can you just blow up the top? Keep  
965:20 going down, keep going down. Perfect.

965:21 And this is a type of report that Blue  
965:22 Ocean Portfolios created on a monthly basis?

965:23 A Yes. This is part of the monthly  
965:24 report.

965:25 Q Okay. And these reports allowed Blue  
966:1 Ocean Portfolios to look at advertising factors in  
966:2 a variety of ways, correct?

966:3 A Yes.

966:4 Q And so we see factor one on the top  
966:5 portion of the chart, right?

966:6 A Yes.

966:7 Q And there's a factor two in the middle  
966:8 portion.

966:9 A Yes.

966:10 Q And there's a factor three on the bottom  
966:11 portion, right?

966:12 A Yes.

966:13 Q And then there's also the trailing six

966:14 month, right?  
966:15 A Yes.  
966:16 Q And the trailing nine month?  
966:17 A Yes.  
966:18 Q And the trailing 12 month?  
966:19 A Yes.  
966:20 Q And the trailing 12 month can be done --  
966:21 or the trailing six months can be done for factor  
966:22 one, two, or three, right?  
966:23 A Yes.  
966:24 Q And the trailing nine months can be done  
966:25 for factors, one, two, and three, right?  
967:1 A Yes.  
967:2 Q And the trailing 12 months could be done  
967:3 for only factor number three, right?  
967:4 A Yes.

251. The July 2012 data contained in the August 2012 advertising report was the most up-to-date data BOP had available at the time the third offering memorandum was prepared. (Ex. 176). On that report, the three July monthly factors were 1.14 (Factor 1), 3.83 (Factor 2), and 0.73 (Factor 3). Winkelmann did not include any of these factors in the third offering memorandum; in which BOP represented that the advertising factor was 0.67. (RX-003 at BO7487 & 7495.)

977:5 Q Okay. Let's go back to Exhibit 176. And  
977:6 so this has data up through August 2000 -- this is  
977:7 a report for August 2012?  
977:8 A Correct.  
977:9 Q And the first -- this would be the most  
977:10 accurate data as of the time of the third offering  
977:11 memoranda, correct?  
977:12 A Can you remind me the date of the third?  
977:13 Q September 1st.  
977:14 A We wouldn't have generated August  
977:15 reports until within the first five days; so the  
977:16 date of the offering would have had July data.  
977:17 The July report would have been --  
977:18 Q That's where I'm going with this. The  
977:19 July data would have been the most up-to-date data  
977:20 Blue Ocean had at the time of the September 1st,  
977:21 2012, offering memoranda, correct?

977:22 A The July report, yes.

252. Out of the various factor numbers contained on the advertising reports, Juris was unsure what factor was used for the offering memoranda. Winkelmann made the decision of which factor to include in the memoranda. Juris agreed that for the second, third, and fourth memoranda, Winkelmann had a wide variety of numbers to choose from when he represented the "current" factor to investors.

967:10 Q Okay. Yeah. Let's clear that up. As  
967:11 you sit here today, do you know which factor Blue  
967:12 Ocean used for any particular offering memorandum?

967:13 A No, I don't. I can't sit here and say  
967:14 we used this one for one or this one for two or  
967:15 this one for three or this one for four. I can't  
967:16 state that off my knowledge.

972:2 Q Okay. And so do you see on Exhibit 76,  
972:3 I think you said there are lots of different  
972:4 factor numbers presented on this spreadsheet,  
972:5 right?

972:6 A On this --

972:7 Q Exhibit 76, what's on -- 176 which is on  
972:8 the screen.

972:9 A Yes, there's many factors.

972:10 Q And what Mr. -- what Blue Ocean  
972:11 Portfolios chose to do with all those different  
972:12 factor numbers, that was Mr. Winkelmann's  
972:13 decision, right?

972:14 A Yes. We presented the data to him.

980:20 Q All right. But whatever snapshot in  
980:21 time you were running those numbers, there is a  
980:22 wide menu of factor numbers to choose from, right?

980:23 A Yes. There's many factors listed on  
980:24 this report.

980:25 Q Right. And even just by picking a  
981:1 current month to pick your snapshot, you can do  
981:2 three different factors, right?

981:3 A Yes.

981:4 Q And then you could increase the variety  
981:5 of factors by going to the different look back  
981:6 periods, right?

981:7 A Yes.

981:8 Q And so in the second and third and

981:9 fourth offering memorandum, if Mr. Winkelmann  
981:10 wanted to tell investors what the current factor  
981:11 was, he had a wide variety of numbers to choose  
981:12 from, right?  
981:13 A Yes.  
982:10 Q And for the second, third, and fourth  
982:11 memoranda, it was Mr. Winkelmann's decision and  
982:12 his alone what factor numbers to disclose to  
982:13 investors, correct?  
982:14 A Yes.  
982:15 Q He decided what factor number to  
982:16 present, right?  
982:17 A Yes.  
982:18 Q He decided what methodology to use  
982:19 between one, two, and three?  
982:20 A Yes.  
982:21 Q He decided what time period to use.  
982:22 A Yes.

253. By the time of the December 2012 report, BOP had again revised the report to track additional data. (RX-120). For December 2012, there was a separate report for BOP's St. Louis and the recently opened Chicago office. (RX-120, pp. 1-2).

903:16 Q Okay. Alan, can you go to RX120.  
903:17 Okay. Can you identify this document?  
903:18 A This document is the December 2012  
903:19 monthly report.  
903:20 Q Okay. And was this document created and  
903:21 maintained similar to those we've been looking at  
903:22 this morning?  
903:23 A Yes.

254. The December 2012 St. Louis report contained three monthly factor calculations: advertising expenses for a month divided by: (a) new annual recurring revenues *resulting* from the month's advertising expenses (Factor 1); (b) new annual recurring revenues based on new client accounts that were signed up *during* the month (Factor 2); and (c) new annual recurring revenues based on new client accounts where the client funds were transferred to BOP's management *during* that month (Factor 3). (RX-120, p. 1).

904:12 Q And the yellow section?  
904:13 A The yellow section reflects data, again,  
904:14 from that particular month's leads; so it's  
904:15 tracking, you know, leads from each month and  
904:16 then, if they became a client, going back and  
904:17 assigning them to what month they first became a  
904:18 lead in the idea that they first heard our ad --  
904:19 they first heard the ad. That way the spend was  
904:20 there and that's when we want to -- compared the  
904:21 spend versus their revenues.  
904:22 Q And then blue section?  
904:23 A The blue section as before is looking at  
904:24 purely appointments that came in during the month,  
904:25 that came in to meet with someone and then the  
905:1 number of those that were closed, essentially  
905:2 became clients, and then their AUM and revenues.  
905:3 Q And the green?  
905:4 A The green section reflects the  
905:5 commission report AUM which is a -- it's a report  
905:6 that is actual dollars transferred under our  
905:7 management each month. So those were actual  
905:8 transfers that were completed.  
905:9 Q So the green section represents money  
905:10 actually received by Blue Ocean Portfolios?  
905:11 A That is correct.

255. The December 2012 St. Louis report also reported trailing six month and trailing nine month factors for each of the three factors, along with a trailing 12 month factor for Factor 3. (Ex. 120, p. 1). According to that report, for St. Louis the trailing six month factor was 2.00 for Factor 1, 1.22 for Factor 2, and 1.02 for Factor 3. (*Id.*). The trailing 9 month factor for Factor 1 was 2.01, 0.91 for Factor 2, and 0.85 for Factor 3. (*Id.*). The trailing 12 month factor for Factor 3 was 0.89.

905:12 Q And then right under the big chart, you  
905:13 see the three trailing factor lines?  
905:14 A Correct.  
905:15 Q And how do those three lines in yellow,  
905:16 blue, and green correspond at all to the chart  
905:17 right above it?  
905:18 A You can see above in each section  
905:19 there's different factors. So the yellow section

905:20 has factor one, the blue section has factor two,  
905:21 and the green section has factor three. And then  
905:22 the trailing figures down at the bottom are  
905:23 pulling the previous six months or nine months and  
905:24 looking at what it looks like for that trailing  
905:25 period of time.

256. The second page of RX-120 is a spreadsheet containing advertising expense and revenue data for BOP's Chicago office. (RX-120, p. 2). That spreadsheet shows that for September through December 2012, BOP's Chicago advertising expenses were \$69,660 and its new recurring revenues were only \$2,574, which results in a ratio of 27.06. (RX-120, p. 2). Had BOP chose to include the Chicago office advertising expenses in its companywide advertising ratio calculations, the companywide ratio would have been higher than the St. Louis ratios. (RX-120, p. 2; RX-55, p. 2).

975:12 Q Right. And so if Mr. Winkelmann wanted  
975:13 to present a factor from just the St. Louis  
975:14 office, he could do that, right?

975:15 A Correct.

975:16 Q If he wanted to present to investors  
975:17 just the St. Louis factor, right?

975:18 A Yes.

975:19 Q And if he wanted to present a company as  
975:20 a whole factor to investors, he could decide to do  
975:21 that, right?

975:22 A Yes.

975:23 Q And at least for 2012, if he presents  
975:24 the companywide factor, that would be higher than  
975:25 the St. Louis only factor, right?

976:1 A Yes.

976:24 Q And so same question: If Blue Ocean  
976:25 Portfolios presents to investors factor data that  
977:1 includes the Chicago office, it's going to be  
977:2 higher than factor data that's St. Louis only,  
977:3 correct?

977:4 A Yes.

257. Another report that Juris used to calculate the advertising factor was an Excel spreadsheet that Juris first created in April 2012. (Ex. 163). That spreadsheet contained a

comment from Winkelmann, in which he wrote next to the "Advertising Factor" column:

"Measure Advertising Efficacy – lower the better." (Ex. 163, Column V). Juris agreed that page 4 of Exhibit 396 (BO 5639) contains the same data as Exhibit 163.

959:4 And I can represent to you that Exhibit  
959:5 163 was a spreadsheet produced by Blue Ocean  
959:6 Portfolios on or shortly before November 20th,  
959:7 2015, that was saved onto the SEC's data  
959:8 management system, but it was otherwise not  
959:9 modified after it was data assisted, okay?

959:10 A Okay.

959:11 Q And, Byron, can you go to the file tab  
959:12 of the document?

959:13 And do you see who the author of the  
959:14 document is?

959:15 A It states my name.

959:16 Q So that's you.

959:17 A Uh-huh.

959:18 Q And when did you create the document?

959:19 A It shows the document was created on  
959:20 April 25th, 2012.

959:21 Q April 25th, 2012, right?

959:22 A Yes.

960:14 Q And it looks like there's a comment from  
960:15 Jim Winkelmann that says, "Measure advertising  
960:16 efficacy, lower the better." Do you see that?

960:17 A I do.

960:18 Q And that's because Mr. Winkelmann  
960:19 actually had access to your spreadsheet and put  
960:20 that comment in there, right?

960:21 A Yes.

962:20 Q And let's look at the factor, column B.

962:21 And let's compare those numbers between 396, page  
962:22 4, and Exhibit 163.

962:23 A They're the same.

962:24 Q The factor numbers are the same, right?

962:25 A Yes.

963:1 Q So it looks like the data Mr. Collins  
963:2 used came directly from a spreadsheet that you  
963:3 created that Blue Ocean Portfolios used to track  
963:4 its factor in 2012, correct?

963:5 A Yes.

258. Juris agreed that for the chart printed on Ex. 396, page 4 (BO 5639), the chart contained the best 2012 data BOP had as of early 2013.

990:6 Q But if you ran this -- if you created  
990:7 these numbers in early 2013, the 2012 data is good  
990:8 data, right?  
990:9 A The 2012 data, yes, it -- it has the  
990:10 data pulled from the financials.  
990:11 Q So that's good data, right? That's the  
990:12 best data you had in 2013 when the spreadsheet was  
990:13 created?  
990:14 A Yes.

259. For the second, third, and fourth offering memoranda, Winkelmann decided what financial information to disclose to investors. For those memoranda, while Winkelmann asked Juris and her colleagues to reviewing the memoranda for grammatical and formatting issues, he never asked them to review the accuracy of the financial information -- including the advertising ratios -- contained in those memoranda.

940:21 Q Okay. And for the second, third, and  
940:22 fourth offering memorandum, you did not decide  
940:23 what financial information to disclose to  
940:24 investors in those memoranda, correct?  
940:25 A Correct.  
941:1 Q That was Mr. Winkelmann's decision,  
941:2 correct?  
941:3 A Correct.  
941:4 Q And for the second, third, and fourth  
941:5 offering memoranda, Mr. Winkelmann would ask you  
941:6 and your colleagues, Sara Meystadt and Kelly  
941:7 Hennessy, to review those memoranda for  
941:8 grammatical and formatting type errors?  
941:9 A Yes.  
941:19 Q Okay. So --  
941:20 A What -- financials in the document I  
941:21 could see, but the source of them I wouldn't --  
941:22 every time a number was in the document, I  
941:23 wouldn't go back and determine exactly the source  
941:24 of that document and review it for accuracy. That  
941:25 was not my job.  
942:1 Q Right. And that's because it wasn't

942:2 your job. And because it wasn't your job, Mr.  
942:3 Winkelmann never asked you for offering memoranda,  
942:4 two, three, or four to review those memorandum  
942:5 before they were put out and make sure the  
942:6 financial data in there was accurate, correct?  
942:7 A Correct.  
942:8 Q And that would include the advertising  
942:9 factor information in the offering memorandum. Mr.  
942:10 Winkelmann never asked you to look at those  
942:11 figures to verify them for accuracy, correct?  
942:12 A In the documents, correct. It was his  
942:13 decision what number showed up in the documents.

#### **IV. Jason Grau Testimony**

260. Jason Grau is 38 years old, and works as a feed salesman.

618:21 Q And how old are you?  
618:22 A 38.  
619:11 Q What do you do for a living, sir?  
619:12 A I sell feed.  
619:13 Q And how long have you been selling feed?  
619:14 A 18 years.

261. Grau became an advisory client of BOP and Winkelmann in early 2011. Grau first contacted BOP after hearing Binkholder's Financial Coach radio show.

619:21 Q And are you currently a client of Blue  
619:22 Ocean Portfolios, LLC?  
619:23 A Yes.  
619:24 Q And when did you first become a client of  
619:25 Blue Ocean Portfolios?  
620:1 A About 2011, early 2011 I think.  
620:2 Q And how did you first hear about Blue  
620:3 Ocean Portfolios?  
620:4 A Advertising on the radio.  
620:5 Q Was there any particular radio program  
620:6 you were listening to?  
620:7 A The Financial Coach Show.  
620:8 Q And who was the host of that?  
620:9 A Bryan Binkholder.  
620:14 And you mentioned that you were a client  
620:15 of Blue Ocean Portfolios. When you became a  
620:16 client, who was your advisor representative at that  
620:17 firm?

620:18 A Jim Winkelmann.

262. Once Grau became a client, BOP managed approximately \$100,000 for Grau.

620:19 Q And when you became a Blue Ocean client,  
620:20 how much money approximately did you have under  
620:21 management with them?  
620:22 A About 100,000.

263. On April 22, 2011, after he had become a BOP client, Grau purchased three first round royalty units for a total of \$75,000. (Ex. 43, BOP 8853-54).

621:7 Q And what is this \$75,000 check for?  
621:8 A Three Royalty Units.  
621:9 Q And at the time you purchased the Royalty  
621:10 Units were you a Blue Ocean Portfolios client?  
621:11 A Yes.

264. At the time Winkelmann was Grau's adviser representative, Winkelmann presented the royalty unit investment option to Grau.

621:12 Q And who presented the Royalty Unit  
621:13 investment option to you?  
621:14 A Jim Winkelmann.  
621:15 Q And what did you understand that your  
621:16 money would be used for?  
621:17 A Advertising and growing the business.  
621:18 Q And before you invested in the Royalty  
621:19 Units, did you have the occasion to speak with Mr.  
621:20 Winkelmann about the investment?  
621:21 A Yes.  
621:22 Q And at the time was he your investment  
621:23 advisor?  
621:24 A Yes.

265. When they discussed the royalty units prior to Grau investing, Grau asked Winkelmann if there would be any issues regarding conflicts of interest. In response, Winkelmann told Grau that the investment was permissible.

621:25 Q And when you spoke to Mr. Winkelmann,  
622:1 what, if anything, did he say about potential  
622:2 conflicts of interest that could arise from the

622:3 Royalty Unit offering?

622:4 A I don't recall. I know that I asked him  
622:5 if this was going to be an issue.

622:6 Q And so you asked him, Mr. Winkelmann, if  
622:7 this is going to be an issue. Can you tell the  
622:8 Court what you mean by that? What were you asking  
622:9 him?

622:10 A I asked -- I can't remember the exact  
622:11 words I said, but something to the effect of is  
622:12 this legal? Is this okay for us to do?

622:13 Q And why did you have that concern in your  
622:14 mind?

622:15 A Because it -- a lot of SEC regulations  
622:16 could be an issue, and I don't know them all and  
622:17 that's why I asked him if this is okay.

622:18 Q And when you said -- asked Mr. Winkelmann  
622:19 is this okay, what did he say to you?

622:20 A Something to the effect of as long as we  
622:21 do the paperwork correctly and do the offering  
622:22 correctly.

654:6 Q Do you remember the interchange that just  
654:7 got me all excited where counsel asked you about a  
654:8 prior statement that you made or may have made to  
654:9 the Division where you said you understood that  
654:10 conflicts of interest may have existed or did  
654:11 exist?

654:12 A Yes.

654:13 Q How, if at all, did that relate to the  
654:14 question you asked Mr. Winkelmann before you  
654:15 invested about whether everything was okay with  
654:16 this investment for the Royalty Units?

654:17 A I asked him if it was legal for him to do  
654:18 this with his clients and/or client, me.

654:19 Q And why did you have that question about  
654:20 whether it would be legal or not?

654:21 A Because we would be where we're at  
654:22 today.

654:23 Q Okay. And can you just, for the record,  
654:24 explain where you're coming from?

654:25 A Because it would be illegal to do that,  
655:1 or I guess a conflict of interest would be the  
655:2 technical term, but I mean, you know, that's -- I  
655:3 mean, that's what I think. I mean, that's why I  
655:4 asked.

266. Prior to Grau's investment, Winkelmann did not tell Grau that BOP would use Grau's investment proceeds to increase Winkelmann's compensation. Grau would have wanted to know this when considering whether to invest, and it would have lowered Grau's interest in the royalty unit investment.

622:23 Q And what, if anything, did Mr. Winkelmann  
622:24 tell you about using your or other investment  
622:25 proceeds to increase his compensation?

623:1 A Nothing.

623:2 Q If in fact Mr. Winkelmann was using your  
623:3 investment proceeds to increase his compensation,  
623:4 is that something you would have wanted to know  
623:5 about?

623:6 A Yes.

623:7 Q Why is that?

623:8 A Because the monies, in my mind, were  
623:9 being used to grow the business, specifically  
623:10 advertising and open offices.

623:11 Q And how, if at all, would it have  
623:12 impacted your decision to invest if you knew Mr.  
623:13 Winkelmann was using your investment proceeds to  
623:14 increase his compensation?

623:15 A It would have lessened my interest to the  
623:16 investment.

267. Grau read the first round offering memorandum, which Winkelmann had provided to him, prior to investing.

625:14 Q Do you recognize the offering memorandum  
625:15 that's Exhibit RX1?

625:16 A Yes.

625:17 Q And who gave it to you?

625:18 A Jim Winkelmann.

625:19 Q And did you read it before you invested?

625:20 A Yes.

268. Prior to investing, Grau would have wanted to know if the 0.22 advertising ratio in first offering memo had been misstated by two thirds. It would have mattered to Grau's

decision to invest because it would have meant that BOP incurred higher expenses to generate revenue.

628:20 Q And after reviewing the offering  
628:21 memorandum and speaking with Mr. Winkelmann before  
628:22 you invested, what was your understanding of Blue  
628:23 Ocean Portfolios' advertising conversion ratio?  
628:24 A Basically that the money was going to be  
628:25 used to advertise and grow the business and this  
629:1 was the cost of doing that.  
629:2 Q Can you explain that, please?  
629:3 A I mean per the document here it says  
629:4 basically for every 22 -- every 22 cents of  
629:5 advertising they're raising a dollar in new  
629:6 revenue.  
629:7 Q And in considering whether to invest, to  
629:8 what extent would it have mattered to you if Blue  
629:9 Ocean Portfolios was misstating that ratio by  
629:10 two-thirds?  
629:11 A That would have mattered.  
629:12 Q Why?  
629:13 A Because the cost of getting that one  
629:14 dollar would have been two-thirds higher. So their  
629:15 expenses would have been much higher.

269. Prior to investing, Grau understood that sponsoring Binkholder's radio show was a key aspect of BOP's advertising plan. Grau would have wanted to know at the time he invested that Binkholder was under investigation by the Missouri securities regulators.

626:20 Q And what, if anything, was your  
626:21 understanding about how Blue Ocean's sponsorship of  
626:22 The Financial Coach Show fit in with its overall  
626:23 advertising plan?  
626:24 A That that was the key advertising plan  
626:25 for what they were doing.  
627:1 Q And at the time you invested in the  
627:2 Royalty Units, were you aware that Mr. Binkholder  
627:3 was under investigation by the Missouri Securities  
627:4 Division?  
627:5 A No.  
627:6 Q And to what extent, if any, would you  
627:7 have wanted to know that information when  
627:8 considering your investment?

627:9 A I would have wanted to know that.  
627:10 Q Why?  
627:11 A It would impact the -- I guess the value  
627:12 of the investment as far as is it something I  
627:13 wanted to do.  
627:14 Q And prior to this lawsuit, the -- the  
627:15 SEC's case against Mr. Winkelmann, did anyone ever  
627:16 tell you that Mr. Binkholder had been barred from  
627:17 being an investment advisor?  
627:18 A No.  
627:19 Q Did anyone ever tell you that Mr.  
627:20 Binkholder was subject to a federal criminal  
627:21 investigation?  
627:22 A No.  
627:23 Q Did anyone tell you that Mr. Binkholder  
627:24 had pled guilty and was sentenced to prison for  
627:25 defrauding investors?  
628:1 A No.  
628:2 Q Has Mr. Winkelmann ever told you that?  
628:3 A No.  
628:4 Q And he's still your investment advisor,  
628:5 correct?  
628:6 A Well, yes.

270. Winkelmann never informed Grau that Binkholder was barred from being an investment adviser, that Binkholder was the subject of a federal criminal investigation, or that Binkholder had pled guilty and was sentenced to prison for defrauding investors.

627:14 Q And prior to this lawsuit, the -- the  
627:15 SEC's case against Mr. Winkelmann, did anyone ever  
627:16 tell you that Mr. Binkholder had been barred from  
627:17 being an investment advisor?  
627:18 A No.  
627:19 Q Did anyone ever tell you that Mr.  
627:20 Binkholder was subject to a federal criminal  
627:21 investigation?  
627:22 A No.  
627:23 Q Did anyone tell you that Mr. Binkholder  
627:24 had pled guilty and was sentenced to prison for  
627:25 defrauding investors?  
628:1 A No.  
628:2 Q Has Mr. Winkelmann ever told you that?  
628:3 A No.  
628:4 Q And he's still your investment advisor,

628:5 correct?

628:6 A Well, yes.

271. On April 23, 2012, Winkelmann emailed Grau, informed him of the upcoming third round royalty unit offering, and asked if Grau would be interested in reviewing the third round offering materials when they become available. (Ex. 129, BO 1813).

632:15 And even though the email was sent on  
632:16 behalf of Mr. Winkelmann, who does the best regards  
632:17 come from?

632:18 A Jim Winkelmann.

632:19 Q And then in the second paragraph, it  
632:20 says, "Additionally, we are planning another raise  
632:21 in Royalty Units in May, round three, for a  
632:22 potential new Blue Ocean branch office in Chicago.  
632:23 We are anticipating that this offering will be for  
632:24 \$650,000. The majority of the proceeds are used to  
632:25 fund our advertising campaign which is a key  
633:1 component to our recurring revenue growth. Please  
633:2 let me know if you'd like to review the Royalty  
633:3 Unit round three material when it becomes  
633:4 available."

633:5 Do you see that?

633:6 A Yes, sir.

633:7 Q And in those two paragraphs that I read  
633:8 to you, what was your understanding of what Mr.  
633:9 Winkelmann was asking you about?

633:10 A If I wanted to participate in round  
633:11 three.

272. Grau has since transferred nearly all of the \$100,000 BOP was managing, because Grau didn't trust what was going on at BOP and he wanted his money moved.

633:20 Q And can you basically explain how much  
633:21 money you started with and how much money is left  
633:22 that he manages for you?

633:23 A About 100,000, and I checked my balance  
633:24 this morning. It's like a dollar or two. It's  
633:25 pretty much gone.

634:1 Q So you withdrew everything but a few  
634:2 bucks?

634:3 A Yes.

634:4 Q Why did you pull almost all your money

634:5 out?

634:6 A I don't -- I don't trust what's going on  
634:7 here and I want my money moved.

#### V. Arthur Buckowitz Testimony

273. Arthur Buckowitz is 61 years old and works as a construction director.

338:18 Q And how old are you?

338:19 A Sixty-one.

338:25 Q And what do you do for a living, sir?

339:1 A I'm a construction director of operations  
339:2 for Hayes Mechanical.

274. Buckowitz was a legacy advisory client of Binkholder. In 2010, Buckowitz became a BOP advisory client. After Binkholder was barred from being an investment adviser, Winkelmann became Buckowitz's adviser representative.

339:20 Q Thank you. And so you mentioned you met

339:21 Mr. Winkelmann through Mr. Binkholder. And before

339:22 you met Mr. Winkelmann, what was your relationship

339:23 with Mr. Binkholder?

339:24 A He was my primary financial advisor.

339:25 Q And while Mr. Binkholder was your advisor,

340:1 is there a time that you became an investment

340:2 advisory client of Blue Ocean Portfolios?

340:3 A Yes.

340:4 Q And when was that?

340:5 A It was around 2010, I think towards the

340:6 end is when I first was investing in Blue Oceans.

340:7 Q And at some point in time, did Mr.

340:8 Winkelmann become your advisor instead of Mr.

340:9 Binkholder?

340:10 A Yes.

340:11 Q And can you please describe the

340:12 circumstances under which Mr. Winkelmann became your

340:13 advisor instead of Mr. Binkholder?

340:14 A Brian Binkholder had lost his license for

340:15 doing investments in the State of Missouri, and at

340:16 that time, that's kind of when -- I think that was

340:17 at the end of '11. That's when I became more

340:18 involved with Jim Winkelmann's organization.

275. Winkelmann brought the royalty units to Buckowitz's attention.

343:12 Q Can you please go to Exhibit 113, Byron,  
343:13 and can you blow up the bottom e-mail, please?  
343:14 And this is March 20th, 2012, Mr.  
343:15 Winkelmann writes, Art, you should have received the  
343:16 offering material. Again, we only have 14 \$25,000  
343:17 units available, so please let me know where your  
343:18 interest level is. Let me know if you have  
343:19 questions on the information.  
343:20 And do you know what the offering material  
343:21 Mr. Winkelmann is referring to?  
343:22 A Yes. It's the Blue Oceans royalty units,  
343:23 I think the second issue number two.  
343:24 Q And, Byron, can you please pull up Exhibit  
343:25 RX2?  
344:1 And this is the offering memorandum number  
344:2 2. Is this what you believe Mr. Winkelmann was  
344:3 referring to in the previous e-mail?  
344:4 A Yes.  
344:5 Q And who gave you this offering memorandum?  
344:6 A Mr. Winkelmann.

276. Before investing in royalty units, Buckowitz read the second round offering memorandum, including the section of the memorandum that represents that BOP's 2011 advertising factor was 0.79.

344:7 Q And did you read the offering memorandum  
344:8 before you invested?  
344:9 A Yes, I did.  
345:15 And I'm going to focus on the last three  
345:16 sentences.  
345:17 The key indicator on the advertising  
345:18 efficacy is to determine how much advertising is  
345:19 needed to generate one additional dollar in new  
345:20 recurring revenue.  
345:21 In 2011, this factor was 0.79 or in other  
345:22 words, Blue Ocean Portfolios spent 79 cents in  
345:23 advertising to buy 1 dollar in new recurring  
345:24 revenue.  
345:25 Did you read those sentences before you  
346:1 invested?  
346:2 A Yes.  
346:3 Q And what was your understanding of Blue  
346:4 Ocean's advertising factor?  
346:5 A That for every 79 cents worth of

346:6 investment in advertising, it would attract enough  
346:7 new investors and revenue to make a dollar's worth  
346:8 of profit.

277. Buckowitz viewed BOP's 0.79 factor for 2011 to reflect positively on BOP, because it meant that BOP was getting a larger return from a smaller amount of advertising. Knowing that the number was incorrect, or that the ratio was above 1.0, could have impacted Buckowitz's decision to invest in the royalty units.

346:9 Q And how -- at the time you read the  
346:10 offering memorandum, how did that .79 factor strike  
346:11 you?

346:12 A I thought it was positive. It was on the  
346:13 good side. Small amount of advertising you get a  
346:14 larger return.

346:15 Q And how, if at all, would it have impacted  
346:16 your decision to invest if you had known this number  
346:17 was wrong and Blue Ocean's 2011 factor was well  
346:18 above one?

346:19 A I assumed this was correct, so that looked  
346:20 to be a positive investment for myself. I didn't  
346:21 realize it was more than that.

346:22 Q And how would it have impacted your  
346:23 decision to invest, if at all, if you had known that  
346:24 number was wrong?

346:25 A It would have -- could have changed my  
347:1 interest in investing.

347:2 Q And why is that?

347:3 A Because if you're paying a dollar and  
347:4 you're losing money on their advertising, to me, it  
347:5 doesn't seem as positive.

278. Prior to investing in the royalty units, Buckowitz spoke with Winkelmann. After their discussion, Buckowitz felt like the royalty units were a good investment.

348:4 Q And before you invested in the royalty  
348:5 units, did you have the occasion to speak with Mr.  
348:6 Winkelmann about the investment?

348:7 A Yes.

348:8 Q And after speaking with Mr. Winkelmann,  
348:9 did you have an impression on whether to invest or  
348:10 not to invest?

348:11 A Based on discussions with Mr. Winkelmann  
348:12 and previous time Mr. Binkholder and reading the  
348:13 document, I felt it was a good investment.

279. Prior to Buckowitz's royalty unit investment, Winkelmann never discussed with him any conflicts of interest, and did not disclose that Buckowitz's investment proceeds could be used to increase Winkelmann's compensation. Buckowitz would have wanted to know this before investing.

348:19 Q And when you spoke to Mr. Winkelmann  
348:20 before you invested, what, if anything, did he say  
348:21 about conflicts of interest that could have existed  
348:22 between him and you?

348:23 A Nothing.

348:24 Q And what, if anything, did Mr. Winkelmann  
348:25 say about using your investment proceeds to increase  
349:1 his compensation and Mr. Binkholder's compensation?

349:2 A I don't remember anything like that. So  
349:3 nothing.

349:4 Q Is that something you would have wanted to  
349:5 know?

349:6 A Yes.

349:7 Q And why is that?

349:8 A It would have impacted the amount of money  
349:9 that's going to be paid back to me, ultimately.

280. Prior to Buckowitz's royalty unit investment, Winkelmann never told Buckowitz why Binkholder had lost his advisory license.

349:10 Q And at any time before you invested in the  
349:11 royalty units, did Mr. Winkelmann tell you why Mr.  
349:12 Binkholder had lost his license?

349:13 A No, I don't believe he did.

281. On April 5, 2012, Buckowitz purchased two second round royalty units, for a total of \$50,000. He funded the purchase with a check from his BOP-managed IRA account. The investment constituted eight to ten percent of Buckowitz's portfolio.

347:9 Do you recognize this check?

347:10 A Yes, I do.

347:11 Q And what is it?  
347:12 A It's a \$50,000 check from my IRA account  
347:13 to purchase Blue Ocean Portfolios royalty units.  
347:14 Q So did you ultimately invest in the  
347:15 royalty units?  
347:16 A Yes, I did.  
347:17 Q When did you invest and how much did you  
347:18 buy?  
347:19 A Two units, 25,000 each. It was \$50,000  
347:20 total. And it was in 2012, I think in April of  
347:21 2012.  
347:22 Q And the check says April 5th, 2012?  
347:23 A Yes.  
347:24 Q At the time you invested, what percentage  
347:25 of your retirement savings was the royalty unit  
348:1 investment?  
348:2 A The 50,000 was about, I'd say, 8 to 10  
348:3 percent of my investments at the time.  
349:14 Q And where did the money come from, the  
349:15 \$50,000? Where did that money come from that you  
349:16 used to purchase the royalty units?  
349:17 A From my IRA account that was with Brian  
349:18 Binkholder.  
349:19 Q And in 2012, I think you testified Mr.  
349:20 Winkelmann was your advisor at that time?  
349:21 A Yes.  
349:22 Q So who was managing your IRA in 2012?  
349:23 A I assume Jim was because Brian wasn't  
349:24 allowed to practice.

282. On April 23, 2012, Winkelmann sent Buckowitz an email which said that BOP was planning a third round royalty unit offering. In that email, Winkelmann asked Buckowitz if he "would like to review the Royalty Unit Round 3 material when it becomes available." (Ex. 131, p. 2)

350:7 Q And then you see how the last sentence  
350:8 says the AUM, as of March 31st first quarter, was  
350:9 71.9 million, \$900,000 above our projected 71  
350:10 million?  
350:11 A Yes.  
350:12 Q And what was your impression from reading  
350:13 what Blue Ocean is saying about its business in that  
350:14 paragraph?

350:15 A That it's positive. They're doing good.  
350:16 Q And can you go to page 2, please, Byron.  
350:17 Pull up those last two paragraphs.  
350:18 Mr. Winkelmann writes, Additionally, we're  
350:19 planning another raise in royalty units in May,  
350:20 round 3, for potential new Blue Ocean branch office  
350:21 in Chicago. The next paragraph, Please let me know  
350:22 if you'd like to review the royalty unit 3 material  
350:23 when it becomes available.  
350:24 What did you understand Mr. Winkelmann to  
350:25 be asking you about there?  
351:1 A If I had interest in buying into the next  
351:2 round.

283. On October 2, 2012, Winkelmann sent Buckowitz another email informing Buckowitz about the third round royalty unit offering, and asking Buckowitz whether he wanted to review the offering materials. (Ex. 198, pp. 1-2).

352:1 Mr. Winkelmann writes, In addition, our  
352:2 third round of financing is currently being placed.  
352:3 So far we've brought in \$325,000 of the \$650,000  
352:4 that we have planned. And then the next paragraph,  
352:5 please let me know if you would be interested in  
352:6 seeing the round three offering, or if you know of  
352:7 anyone interested in participating in our growth  
352:8 going forward.  
352:9 What's Mr. Winkelmann asking you about  
352:10 there?  
352:11 A If I have interest in buying into the  
352:12 round three offering.

284. Buckowitz never made a second royalty unit investment, because he "had no interest in investing anymore."

352:25 Q Why not?  
353:1 A I had no interest.  
353:2 Q Why?  
353:3 A I had other investments going, and I had  
353:4 no interest in investing anymore.

285. Buckowitz later transferred his portfolio and stopped using BOP as his advisor, because he had "a trust issue" with BOP.

353:5 Q And are you still a client, an investment  
353:6 advisor client of Blue Ocean Portfolios?  
353:7 A No.  
353:8 Q Why not?  
353:9 A Well, after the investigation of Mr.  
353:10 Binkholder, and then I found out there was some  
353:11 investigations going on with Blue Oceans, I called  
353:12 Jim up and told him that I needed to move my money  
353:13 some place else. I had no interest in doing this  
353:14 anymore. I felt there was a trust issue.

286. Buckowitz's royalty unit has paid him back approximately \$25,000 of the \$125,000 he is owed on the investment. Buckowitz is not on pace to be paid back within the seven or eight years he understood it would take for BOP to pay him the full \$125,000 on his investment.

353:15 Q How has your royalty unit investment  
353:16 performed compared to how you thought it would  
353:17 perform after reading the offering memorandum and  
353:18 speaking with Mr. Winkelmann?  
353:19 A My impression was if I had a \$50,000  
353:20 investment, that within a set period, I would have  
353:21 about \$125,000 paid back. And my impression about  
353:22 the charts and the offering, it was approximately  
353:23 seven to eight years is what I was thinking.  
353:24 Q Are you on pace to be paid back in seven  
353:25 to eight years?  
354:1 A Right now, I think after four years, four  
354:2 years, little over four years I'm about somewhere  
354:3 around \$25,000 paid back.  
354:4 Q And how much are you supposed to be paid  
354:5 back total?  
354:6 A 125,000.

## VI. Thomas Swardson Testimony

287. Thomas Swardson is a retiree who became a BOP advisory client in August 2012. Swardson was introduced to BOP after reviewing Binkholder's "Financial Coach" website.

10:10 Q And what do you do for a living?  
10:11 A I'm retired. I've been retired since  
10:12 April of 2011.

10:13 Q Are you familiar with James R.  
10:14 Winkelmann and Blue Ocean Portfolios?  
10:15 A I am.  
10:16 Q What is your relationship with Mr.  
10:17 Winkelmann and Blue Ocean Portfolios?  
10:18 A Mr. Winkelmann and Blue Ocean Portfolios  
10:19 managed my investments from August 2012 to August  
10:20 2014.  
10:24 Q And, Mr. Swardson, how did you learn of  
10:25 Mr. Winkelmann and Blue Ocean Portfolios?  
11:1 A I came across a website for someone  
11:2 called The Financial Coach, Bryan Brinkholder.  
11:3 Q When you say "Bryan Brinkholder," do you  
11:4 mean Bryan Binkholder?  
11:5 A Binkholder.  
11:6 Q And what did you do after learning of  
11:7 Mr. Winkelmann and Blue Ocean Portfolios from  
11:8 Bryan Binkholder's website?  
11:9 A From The Financial Coach website, there  
11:10 was a link. You fill out your name and email and  
11:11 telephone number, and then the people from -- they  
11:12 were pushing people to Blue Ocean Portfolios. And  
11:13 the people from Blue Ocean Portfolios contacted me  
11:14 for further information.

288. In August 2012, after driving from Indianapolis to St. Louis and meeting with Winkelmann, Swardson transferred \$710,000 to BOP's management. This \$710,000 constituted the entirety of Swardson's retirement savings.

11:21 Q And who, if anyone, did you ultimately  
11:22 speak with at Blue Ocean Portfolios?  
11:23 A I came to St. Louis in early August of  
11:24 2014 and met with Jim Winkelmann.  
11:25 Q And how did you get from Indianapolis to  
12:1 St. Louis?  
12:2 A I drove myself.  
12:3 Q And what did you discuss with Mr.  
12:4 Winkelmann when you met with him in St. Louis,  
12:5 Missouri?  
12:6 A He explained how the different options  
12:7 of things that he would invest it and different  
12:8 ways to manage the portfolio.  
12:9 Q And what, if anything, did you do after  
12:10 speaking with Mr. Winkelmann?

12:11 A I turned over my portfolio to Blue Ocean  
12:12 Portfolios to manage.  
12:13 Q And what was the value of the portfolio  
12:14 that you turned over to Blue Ocean Portfolios to  
12:15 manage?  
12:16 A About 710,000.  
12:17 Q And what percent of your net worth  
12:18 excluding your home did that roughly \$710,000  
12:19 represent?  
12:20 A That would be 100 percent.

289. In Swardson's discussions with Winkelmann, Winkelmann frequently discussed the subject of fiduciary duties. Winkelmann told Swardson that part of Winkelmann's fiduciary duty was to put Swardson's interests ahead of Winkelmann's.

12:21 Q In your discussions with Mr. Winkelmann,  
12:22 to what extent, if any, was the subject of  
12:23 fiduciary duty discussed?  
12:24 A That -- that term came up quite often.  
12:25 Jim explained to me that the term "fiduciary,"  
13:1 which was new to me at the time, where it is  
13:2 they're held to a lot higher standards than simply  
13:3 an advisor or a certified financial planner. And  
13:4 he -- it's -- it's his -- he has to put my  
13:5 interests ahead of his own in my investment -- in  
13:6 the investment philosophy.  
13:7 Q And who brought up the topic of  
13:8 fiduciary duty when you met with Mr. Winkelmann?  
13:9 A Jim Winkelmann did.

290. In September 2012, Winkelmann brought the royalty units to Swardson's attention. Winkelmann told Swardson that he should expect his principal investment back within two to three years, and that he would get paid the full 2.25 times his investment in approximately five years.

13:13 Q And how did you become familiar with  
13:14 that term?  
13:15 A At the beginning of September, Jim  
13:16 Winkelmann called me and made an offer explaining  
13:17 what the Royalty Unit was.  
13:18 Q And in your discussions with Mr.

13:19 Winkelmann, what did he tell you about what you  
13:20 could expect to receive in return for purchasing a  
13:21 Blue Ocean Royalty Unit?  
13:22 A The Royalty Units were \$25,000  
13:23 investment. He explained that you should get your  
13:24 principal back within two to three years and it  
13:25 was an offer for 2.25 times what my initial  
14:1 investment was, so that was slightly more than  
14:2 56,000, and I should realize that investment in  
14:3 around five-year period.

291. Before Swardson invested in the royalty units, Winkelmann told Swardson that the first and second offerings were "ahead of schedule" and that BOP's growth was ahead of schedule.

14:4 Q What else, if anything, did Mr.  
14:5 Winkelmann tell you about the Blue Ocean Royalty  
14:6 Unit offering?  
14:7 A He said this is the third offering that  
14:8 they've had. The first offering paid three times  
14:9 the investment. The second offering paid two and  
14:10 a half times the investment. And the business was  
14:11 growing. The other two offerings were ahead of  
14:12 schedule. And as the business grows, it takes  
14:13 more money to make money and so he could only  
14:14 offer 2.25 times earnings at this point.  
14:15 Q What, if anything, else did Mr.  
14:16 Winkelmann tell you about the growth of Blue Ocean  
14:17 Portfolios?  
14:18 A The growth was ahead of schedule.

292. Before Swardson purchased his royalty units, Winkelmann told Swardson that Winkelmann wanted to open an Indianapolis office, and that Swardson could become a BOP employee and work in that office.

14:25 Q What other locations, if any, were  
15:1 discussed when you met with -- when you talked to  
15:2 Mr. Winkelmann about the Blue Ocean Portfolios  
15:3 Royalty Unit?  
15:4 A He's growing and he had his eye on  
15:5 Indianapolis. I was a successful salesman. And  
15:6 it was, you know, brought up that I could even be

15:7 involved in some way in his Indianapolis operation  
15:8 if the growth continues.

15:9 Q And what did you think when Mr.  
15:10 Winkelmann talked about possibly opening up an  
15:11 Indianapolis office and possibly having you work  
15:12 there?

15:13 A I was flattered with that.

15:14 Q And when, before or after you purchased  
15:15 a Royalty Unit, did Mr. Winkelmann first bring up  
15:16 the possibility of Blue Ocean Portfolios opening  
15:17 an office in Indianapolis and you possibly working  
15:18 there?

15:19 A That was during the conversations that I  
15:20 had with him in early September about the Royalty  
15:21 Unit that he was offering.

15:22 Q Okay. And when in time relation to the  
15:23 purchase of your Royalty Unit did that purchase  
15:24 take place? Before or after?

15:25 A I purchased the Royalty Unit around the  
16:1 middle of September. He offered it to me the  
16:2 beginning of September. I purchased it -- I  
16:3 signed off on it the middle of September and I  
16:4 think it was finalized the beginning of October.  
16:5 And during that time, I had several locations --  
16:6 conversations with Jim. And we would talk about  
16:7 the Indianapolis office opening up.

293. Before investing in the royalty units, Swardson read the third round offering memorandum at least twice. Swardson also spoke with Winkelmann, who told Swardson that he should expect to receive his investment principal back within two or three years and the full investment returns in approximately five years.

16:20 Q How many times did you read Respondent's  
16:21 Exhibit Number 3?

16:22 A I'd say I read it at least completely a  
16:23 couple of times and then referred to it at other  
16:24 times.

16:25 Q And how long did you spend in total  
17:1 reading Respondent's Exhibit Number 3?

17:2 A I like to read slow. So I would say at  
17:3 least a couple of hours each time.

17:4 Q And what did you do, if anything, after  
17:5 you read Respondent's Exhibit Number 3?

17:6 A I had some questions and I had  
17:7 conversations with Jim on the phone.  
17:8 Q And in those conversations what, if  
17:9 anything, did you discuss with Mr. Winkelmann  
17:10 regarding when you could expect to receive a  
17:11 return on that Royalty Unit investment?  
17:12 A We talked about I should be able to get  
17:13 my principal back within a two to three-year  
17:14 period and that realize the full \$56,000, 2.2 --  
17:15 2.25 times my investment, in or around the  
17:16 five-year period.

294. Prior to investing, Swardson read the section of the third round offering memorandum which represented that BOP's advertising factor for 2011 was 0.78. After reading this section and speaking with Winkelmann, Swardson believed that BOP was spending 78 cents in order to bring in \$1 in business.

18:2 Q I'd like to turn to page 13 which bears  
18:3 Bates stamp BO7497 of Respondent's Exhibit 003.  
18:4 And I'd put that on the monitor in front of you.  
18:5 If you look at the last few sentences on page 13  
18:6 of Respondent's Exhibit 3, you'll see that it says  
18:7 in bold, "Advertising Yield Factor:" It then  
18:8 continues: "This is the key driver of the Blue  
18:9 Ocean Portfolios model. This advertising factor  
18:10 for 2011 was .78."  
18:11 Did you read these sentences before you  
18:12 invested --  
18:13 A Yes, I did.  
18:14 Q -- in the Blue Ocean Royalty Units?  
18:15 A Yes, I did.  
18:16 Q And when you read the sentence, "This  
18:17 advertising factor for 2011 was 0.78," what did  
18:18 you think Blue Ocean Portfolios's advertising  
18:19 performance was in 2011?  
18:20 A To me it looked like, and Jim confirmed  
18:21 it in conversations, that he was spending 78 cents  
18:22 to increase business to Blue Ocean Portfolios by a  
18:23 dollar.

295. Winkelmann never told Swardson that BOP's 2011 advertising factor was greater than 1.0. Swardson would have wanted to know if the factor was greater than 1.0.

19:6 Q When, if ever, did Mr. Winkelmann tell  
19:7 you that this factor was not actually 0.78, but in  
19:8 reality was greater than 1.0?

19:9 A Jim Winkelmann never told me that it was  
19:10 more than the .78.

19:11 Q To what extent, if any, would you have  
19:12 wanted to know if the 0.78 advertising factor was  
19:13 overstated in Respondent's Exhibit 003?

19:14 A That should be -- that's an easy  
19:15 question to answer. You know, if I'm going to  
19:16 make an investment, I should know what the facts  
19:17 are.

296. Prior to investing, Swardson read the section of the third round offering memorandum which represented that the royalty unit investment appears to be "the most compelling way for the investors, owners, and employees to align their interests."

20:24 Q I'd next like to direct your attention  
20:25 to page 4 of Respondent's Exhibit Number 3 which  
21:1 bears the Bates stamp BO7488. The first sentence  
21:2 of the second paragraph on this page begins: "The  
21:3 resulting revenue streams are both recurring and  
21:4 growing; therefore, the concept of capitalizing  
21:5 the business with a royalty method would appear to  
21:6 be the most compelling way for the investors,  
21:7 owners, and employees to align their interests."

21:8 Did you read that sentence?

21:9 A Yes.

297. On October 15, 2012, Swardson purchased one royalty unit for \$25,000. (Ex. 455; Ex. 347, BOP 9781, 9791). He funded the purchase by deducting the funds from his BOP-managed account. Winkelmann never told Swardson that their interests would not always be aligned, and never mentioned that any conflicts of interest existed between Winkelmann and Swardson.

17:17 Q And did you ultimately purchase any  
17:18 Royalty Units?

17:19 A Yes, I did. I purchased one.

17:20 Q And how did you fund the purchase of  
17:21 that Royalty Unit?

17:22 A It was deducted from my portfolio with  
17:23 Blue Ocean.

21:10 Q What did it mean to you, Mr. Swardson,  
21:11 when Mr. Winkelmann said in writing that "The  
21:12 concept of capitalizing the business with a  
21:13 royalty method would appear to be the most  
21:14 compelling way for the investors, owners, and  
21:15 employees to align their interests"?

21:16 A I thought it was a good idea. I think I  
21:17 was getting in on the ground floor of a pretty  
21:18 solid investment here.

21:19 Q And when, if ever, did Mr. Winkelmann  
21:20 tell you that his and your interests would not  
21:21 always be aligned?

21:22 A Jim Winkelmann never told me that our  
21:23 interests wouldn't be aligned.

21:24 Q And when, if ever, did Mr. Winkelmann  
21:25 tell you that his -- his interests actually may  
22:1 conflict with yours?

22:2 A Jim Winkelmann never mentioned any  
22:3 conflicts.

298. Knowing that Winkelmann would choose to increase his own compensation rather than increasing royalty unit payments to Swardson would have affected Swardson's decision to invest.

22:4 Q How, if at all, would it have affected  
22:5 your decision to purchase a Royalty Unit if you  
22:6 knew that Mr. Winkelmann would choose to increase  
22:7 his own compensation rather than increasing  
22:8 Royalty Unit payments to you?

22:9 A That would really affect it because,  
22:10 again, the whole time he talked about being the  
22:11 fiduciary and he has to look out for my interest  
22:12 ahead of his interests. So if you're saying that  
22:13 he's going to reward himself before he rewards the  
22:14 royalty holders, that would be in conflict with  
22:15 what he has stated.

299. Winkelmann never told Swardson that Binkholder had been barred from being an investment adviser. Had Swardson known this, he likely would not have invested in the royalty units.

23:1 Q Of course. What was your understanding,  
23:2 if any, of Mr. Binkholder's involvement with Blue  
23:3 Ocean Portfolios at the time that you purchased  
23:4 your Royalty Unit?

23:5 A Well, I thought The Financial Coach,  
23:6 Brian Binkholder's organization, was what you  
23:7 might say the headhunter to get people to invest  
23:8 in Blue Ocean Portfolios; so I thought they were  
23:9 connected.

23:10 Q And when, if ever, did Mr. Winkelmann  
23:11 tell you that the Missouri securities regulator  
23:12 had on December 29th, 2011, barred Mr. Binkholder  
23:13 from being an investment advisor?

23:14 A That subject never came up. I did not  
23:15 know that. And through these proceedings, it was  
23:16 quite disturbing to me because it -- Mr.  
23:17 Binkholder was barred before I even did with Blue  
23:18 Ocean Portfolios.

23:19 Q And how, if at all, would the knowledge  
23:20 of Mr. Binkholder's bar have impacted your  
23:21 decision to invest in the Blue Ocean Royalty Unit?

23:22 A I probably never would have.

23:23 Q Why not?

23:24 A If -- you know, if I got turned on by a  
23:25 web seminar type thing six months after somebody  
24:1 was barred, you know, and there's still that  
24:2 information out there and then it took me to the  
24:3 Blue Ocean site and still nobody told me that that  
24:4 guy is out of business, you know, I probably  
24:5 wouldn't have gone any further with -- I just  
24:6 would have looked on for some other type of  
24:7 investment opportunities.

300. Approximately one year after he invested, Swardson became concerned that BOP was only paying him the minimum royalty payments. Swardson asked Winkelmann why royalty unit investors were being paid the minimum, but he never got an explanation from Winkelmann.

47:11 Counsel will object if they don't like  
47:12 where I'm going with these questions, but I would  
47:13 like to know when was the first time, thinking  
47:14 back, that you became concerned that the  
47:15 performance of your Royalty Unit investment was

47:16 not as good as you thought it would be?  
47:17 THE WITNESS: I understood probably  
47:18 about one year into it that, you know, it was just  
47:19 paying the absolute minimum.  
48:19 JUDGE PATIL: All right. So when you  
48:20 became concerned about the Royalty Unit  
48:21 underperforming based on your understanding of how  
48:22 much was under management, what -- what, if  
48:23 anything, did you do or convey to Mr. Winkelmann  
48:24 about that concern?  
48:25 THE WITNESS: You know, I asked him  
49:1 about that and he says the investors are still  
49:2 getting paid, but I never got a firm answer why  
49:3 we're not getting paid more.

301. Swardson has received \$3,443 in royalty unit payments, and Swardson believes the royalty unit investment has not performed well compared with his expectations when he invested. At this rate, Swardson won't get his principal back for 29 years and he won't get his full royalty payments for more than 65 years.

24:14 Q And how much have you received from Blue  
24:15 Ocean Portfolios in connection with the purchase  
24:16 of your Royalty Unit?  
24:17 A \$3,443.  
24:18 Q And how has your Royalty Unit investment  
24:19 performed compared to how you thought it would  
24:20 perform based on your reading of the offering  
24:21 memorandum and your conversations with Mr.  
24:22 Winkelmann before you invested?  
24:23 A Not very good. I was expecting my  
24:24 principal return within two to three years. I've  
24:25 currently only got \$3,443 left and it's been  
25:1 exactly four years. So if you do the math on  
25:2 this, I won't get my \$25,000 initial investment  
25:3 back at this rate of pay for over 29 years.  
25:4 And as far as realizing what I signed up  
25:5 for, the 2.25, which is slightly over 56,000, it's  
25:6 going to take 60 -- over 65 years to get that  
25:7 money back. So that would make me 95 years old  
25:8 just before I got my initial principal back and  
25:9 133 years old before I realized my investment. I  
25:10 don't know if modern miracles are going to happen.

**VII: Michael King Testimony**

302. Royalty unit investor Michael King is a friend of Winkelmann's. King has known Winkelmann for over 25 years, and King attended Winkelmann's wedding.

1004:19 Q So I understand that you've known Mr.

1004:20 Winkelmann for about 26 or 27 years?

1004:21 A Correct.

1004:22 Q And you attended his wedding?

1004:23 A Yes.

1004:24 Q You consider Mr. Winkelmann to be a

1004:25 friend today, correct?

1005:1 A Yes.

303. Prior to investing in the royalty units, King had been an employee and advisory representative of BOP.

1005:2 Q And you were an investment advisor

1005:3 representative of Blue Ocean Portfolios from

1005:4 November 2009 through October 1st, 2011; is that

1005:5 correct?

1005:6 A 2011, yes, sir, yeah.

1010:25 Q All right. Well, we know it's some

1011:1 period of time in the 2009 through some period in

1011:2 2011 you were an investment advisor representative

1011:3 of Blue Ocean Portfolios; is that fair to say?

1011:4 A Correct.

1011:20 Q Okay. And ultimately you purchased a

1011:21 total of three Blue Ocean Portfolios Royalty

1011:22 Units, correct?

1011:23 A Uh-huh, yes.

1011:24 Q You purchased your first Blue Ocean

1011:25 Portfolios Royalty Unit in March of 2012 for

1012:1 \$25,000, correct?

1012:2 A Yes.

1012:3 Q And you purchased your -- you purchased

1012:4 two additional Blue Ocean Portfolios Royalty Units

1012:5 in September of 2012 for a total of \$50,000 or

1012:6 \$25,000 each; is that correct?

1012:7 A Yes.

304. At the time of his royalty unit purchase, King was a BOP advisory client.

1012:8 Q Okay. And at the time that you

1012:9 purchased your Blue Ocean Portfolios Royalty Units  
1012:10 in March of 2012 and September of 2012, you were a  
1012:11 Blue Ocean Portfolios advisory client, correct?  
1012:12 A In 2012?  
1012:13 Q Yes.  
1012:14 A No, it was -- the document just said it  
1012:15 was October -- or October of 2011.  
1012:16 Q And I'm sorry if I'm not speaking up,  
1012:17 I'll try to be a little louder.  
1012:18 If I asked you if you were a Blue Ocean  
1012:19 Portfolios advisory client --  
1012:20 A Oh, I'm sorry.  
1012:21 Q -- at the time that you purchased the  
1012:22 Royalty Units in March of 2012 --  
1012:23 A Yes.  
1012:24 Q -- and September of 2012.  
1012:25 A Yes.

305. King funded his royalty unit purchase with a transfer from his BOP-managed IRA account.

1015:5 Q I'd like to turn to your first purchase  
1015:6 of Royalty Units in March of 2012. You funded the  
1015:7 purchase of your first Royalty Unit with funds  
1015:8 that came from your Blue Ocean Portfolios managed  
1015:9 IRA account that was held at Scottrade, correct?  
1015:10 A Yes, that came from a rollover from my  
1015:11 401(k).  
1015:12 Q And Blue Ocean Portfolios, LLC, was the  
1015:13 investment advisor over the IRA account that  
1015:14 ultimately was used to fund the Blue Ocean  
1015:15 Portfolios Royalty Unit, correct?  
1015:16 A Yes.  
1015:17 Q And at the time that you purchased the  
1015:18 two additional Blue Ocean Portfolios Royalty Units  
1015:19 in September of 2012, you again used your Blue  
1015:20 Ocean Portfolios managed IRA account that was held  
1015:21 at Scottrade to fund that purchase.  
1015:22 A Yes.

306. King is of the opinion that these proceedings are a "classic case of prosecutorial overreach."

1026:19 Q So, Mr. King, you read Exhibit --

1026:20 Division Exhibit 477 before coming here today,  
1026:21 correct?

1026:22 A Uh-huh.

1026:23 Q And if you look at the first clause of  
1026:24 the second full paragraph, you'll see that this  
1026:25 email describes the Division's case as "a classic  
1027:1 case of prosecutorial overreach." Do you see  
1027:2 that?

1027:3 A Yeah. That seemed very accurate.

1027:4 Q Okay. So at the time you read it, you  
1027:5 felt that was an accurate statement?

1027:6 A Correct.

### VIII. James Hipsky Testimony

307. James Hipsky was a BOP advisory client at the time Winkelmann presented

Hipsky with the royalty unit investment opportunity in the spring of 2012.

1037:16 Q Okay. And you are an advisory client of  
1037:17 Mr. Winkelmann and his advisory Blue Ocean  
1037:18 Portfolios, LLC, today, correct?

1037:19 A Uh-huh.

1037:20 Q Mr. Winkelmann presented you with an  
1037:21 opportunity to purchase a Blue Ocean Royalty Unit  
1037:22 in the spring of 2012, correct?

1037:23 A Yes.

1037:24 Q And ultimately purchased the Blue Ocean  
1037:25 Royalty Unit during the spring of 2012 for  
1038:1 \$25,000?

1038:2 A Correct.

1039:6 Q So I'd asked a couple minutes ago  
1039:7 whether you are an advisory client of Mr.  
1039:8 Winkelmann and his firm Blue Ocean Portfolios, and  
1039:9 you said you were today, right?

1039:10 A Yes.

1039:11 Q And that's true?

1039:12 A Yes.

1039:13 Q Okay. And you were also back in the  
1039:14 spring of 2012, right?

1039:15 A Correct.

1039:16 Q Okay. And in the spring of 2012, during  
1039:17 the same time that you were an advisory client of  
1039:18 Mr. Winkelmann and Blue Ocean Portfolios, you  
1039:19 bought the Royalty Unit for \$25,000.

1039:20 A Correct.

308. On August 24, 2012, Winkelmann emailed Hipsky and asked if he would be interested in participating in the third round royalty unit offering. (Ex. 485, BO 677 ("Please let me know right away if you are interested in participating in this round as we have many prospective investors and will give preference to the current royalty holders.")). Hipsky responded that he would "sit this one out" and not make an additional royalty unit investment. (Ex. 485, BO 676)

1042:15 Q So going back to Division Exhibit 485  
1042:16 please, Byron.  
1042:17 If you turn to the response from Mr.  
1042:18 Hipsky to Mr. Winkelmann, you'll see, Mr. Hipsky,  
1042:19 that you responded to Mr. Winkelmann's email on  
1042:20 Sunday, August 26th, 2012. And you wrote, "Jim, I  
1042:21 appreciate the offer to invest in the next program  
1042:22 to expand into Chicago. But at this time I'm  
1042:23 going to sit this one out. Thanks for thinking of  
1042:24 me and giving me the opportunity. Sincerely, Jim  
1042:25 Hipsky."  
1043:1 A Uh-huh.  
1043:2 Q Do you remember writing that email?  
1043:3 A If it's there, I wrote it.  
1043:4 Q Okay. So it's fair to say that you did  
1043:5 not invest in this offering that was being  
1043:6 presented to you by Mr. Winkelmann in August of  
1043:7 2012, correct?  
1043:8 A That's correct.

#### **IX. Bryan Swift Testimony**

309. Bryan Swift has known Winkelmann for seven years and they are close friends. Because they belong to the same gym, they have seen "each other walking around in towels" for seven straight years.

1052:9 Q Okay. And how do you know Mr.  
1052:10 Winkelmann?  
1052:11 A We go to the same gym.  
1052:12 Q Uh-huh.  
1052:13 A So for like seven years straight, we saw

1052:14 each other walking around in towels.  
1052:15 Q And so you've known each other for about  
1052:16 seven years?  
1052:17 A Yes.  
1058:22 Q Mr. Swift, is it fair to say that you  
1058:23 are a close friend of Mr. Winkelmann?  
1058:24 A Yes.  
1058:25 Q You have nicknames for one another?  
1059:1 A Yes.

310. Bryan Swift's brother, Shepherd, was a BOP employee and adviser representative from October 2011 to February 2014.

1059:8 Q Your brother Shepard was a registered  
1059:9 investment advisor associated with Blue Ocean  
1059:10 Portfolios from October 14th, 2011, through  
1059:11 February 27th, 2014, right?  
1059:12 A Yes.

311. Bryan Swift is a high net worth investor, in that his \$100,000 first round royalty unit investment constituted less than 0.1% of his total assets.

1054:18 Q And your total -- how much total did you  
1054:19 invest in a Royalty Unit of Blue Ocean Portfolios?  
1054:20 A The first round was 100,000 and I  
1054:21 believe the second round was either 25 or 50. I  
1054:22 don't remember off the top of my head.  
1054:23 Q And just very generally, approximately  
1054:24 what percentage of your total assets would that  
1054:25 represent?  
1055:1 A Can I use a calculator? I think it's  
1055:2 less than one-tenth of 1 percent.

312. Bryan Swift was an advisory client of BOP at the time he purchased royalty units.

1059:13 Q Okay. And I believe you testified that  
1059:14 you were both personally an advisory client of Mr.  
1059:15 Winkelmann and Blue Ocean Portfolios as well as  
1059:16 the 401(k) plan of your company.  
1059:17 A Correct.

313. Winkelmann originally presented Bryan Swift with the royalty unit opportunity. In April 2011, Swift purchased four first round royalty units, for a total of \$100,000.

Winkelmann later approached Swift about purchasing additional royalty units. In February 2013, Swift purchased \$50,000 in fourth round royalty units.

1061:1 Q You, through Barking Dogs LLC, purchased  
1061:2 your first four Royalty Units in April 2011 for  
1061:3 100,000?  
1061:4 A Uh-huh.  
1061:5 Q And after you purchased the first four  
1061:6 Royalty Units, Mr. Winkelmann approached you again  
1061:7 about purchasing additional Blue Ocean Portfolios  
1061:8 Royalty Units on or about August 24th, 2012,  
1061:9 right?  
1061:10 A Okay. Yep.  
1072:22 And true to your word, as I'll show you  
1072:23 in Division Exhibit 242, Byron, the next day,  
1072:24 February 15th, 2013, you wrote a check for \$50,000  
1072:25 and bought ten additional Royalty Units; is that  
1073:1 correct?  
1073:2 A Yeah.

314. When he invested in the fourth round royalty units, Bryan Swift was aware that BOP was experiencing financial difficulties. Swift told Winkelmann that Swift "would write a check for whatever he needed to keep everything going." One of the reasons Swift invested in the fourth round units, in light of the issues facing BOP, was that he wanted to help out his friend Winkelmann.

1074:21 Q Okay. So page 5 of RX004 says, "As a  
1074:22 result of learning of the subpoena and subsequent  
1074:23 State of Missouri investigation, Blue Ocean  
1074:24 Portfolios terminated its round three royalty  
1074:25 offering in mid November of 2012. It was planned  
1075:1 that round three was to raise \$650,000 -- only  
1075:2 275,000 was raised. The consequences that Blue  
1075:3 Ocean Portfolios is currently experiencing a  
1075:4 shortage of cash and, therefore, in addition to  
1075:5 advertising and general administration expenses,  
1075:6 up to \$9,500 of the proceeds of this offering will  
1075:7 be used to pay rent for March and up to \$9,600  
1075:8 will be used to meet March payroll. This is in  
1075:9 addition to \$30,000 in other administrative and  
1075:10 advertising related expenses. If Blue Ocean

1075:11 Portfolios fails to raise at least \$50,000 prior  
1075:12 to March 1, 2013, then there may not be enough  
1075:13 money to meet payroll and the next quarterly fee  
1075:14 revenues estimated at \$195,000 will not be  
1075:15 received until the first week of April. This  
1075:16 would leave a four to five-week gap in funding and  
1075:17 the consequences that would ensue."

1075:18 Q Did you read that paragraph?

1075:19 A I actually talked at length with Wink  
1075:20 about it and told him that I would write a check  
1075:21 for whatever he needed to keep everything going.

1076:12 Q The reason you chose to invest in Blue  
1076:13 Ocean Portfolios on February 15th, 2013, in light  
1076:14 of the regulatory uncertainty in Blue Ocean  
1076:15 Portfolios's tenuous financial condition was  
1076:16 because you wanted to help your friend out,  
1076:17 correct?

1076:18 A Actually it was kind of twofold. I  
1076:19 didn't think what the State of Missouri was doing  
1076:20 was right.

1076:21 Q That's one.

1076:22 A Yeah.

1076:23 Q And the second?

1076:24 A Was helping a friend out.

1076:25 Q Okay.

## **X. Thomas Dixon Testimony**

315. Thomas Dixon and Winkelmann belong to the same church and have known each other for fifteen years.

1418:23 Q And how did you first meet Mr.

1418:24 Winkelmann?

1418:25 A I go to church with Jim. We go to Our  
1419:1 Lady of the Pillar Catholic Church here in St.  
1419:2 Louis, and that's where I met Jim and we became  
1419:3 members of that church.

1419:4 Q Can you just approximate how long have  
1419:5 you known him?

1419:6 A Probably fifteen years.

316. Dixon considers Winkelmann to be one of his closest friends and advisors.

Dixon testified that he would "trust [Winkelmann] with anything that I have."

1422:8 Q You consider Mr. Winkelmann to be one of  
1422:9 your closest friends and advisors, correct?  
1422:10 A I do.  
1431:14 Q Okay. You trust Mr. Winkelmann, right?  
1431:15 A I do. He's one of my best friends. I  
1431:16 would trust him with anything that I have.

317. Dixon has been an advisory client of BOP since April 2011.

1422:14 Q Mr. Winkelmann, his firm Blue Ocean  
1422:15 Portfolios have managed an IRA account for you  
1422:16 since that time at least April 2011, correct?  
1422:17 A Yes.  
1422:18 Q And today you are still a -- a client of  
1422:19 Blue Ocean Portfolios, right?  
1422:20 A Yes.  
1422:21 Q You have paid quarterly fees to Blue  
1422:22 Ocean Portfolios at all times from at least April  
1422:23 1st, 2011 through today in return for receiving  
1422:24 investment advice, right?  
1422:25 A Yes.

318. Prior to investing in BOP royalty units, Dixon was not sure whether to invest \$25,000 or \$50,000, and he discussed that decision with Winkelmann prior to investing.

1423:10 Q You went back and forth between  
1423:11 purchasing \$25,000 or \$50,000 worth of royalty  
1423:12 units and wanted to discuss that decision with Mr.  
1423:13 Winkelmann, right?  
1423:14 A Yes.  
1423:15 Q So you weren't sure how much you  
1423:16 actually wanted to invest in this royalty unit  
1423:17 opportunity, right?  
1423:18 A That's correct.  
1423:19 Q And you needed to talk to Mr. Winkelmann  
1423:20 to finalize that decision?  
1423:21 A I believe that's correct, yes.

319. In May 2011, Dixon purchased two first round royalty units for a total of \$50,000. Dixon was a BOP advisory client at the time of his royalty unit investment. Dixon funded his royalty unit investment with a transfer from his BOP-managed IRA account.

1423:22 Q And you ultimately purchased two Blue

1423:23 Ocean royalty units in May of 2011 for a total of

1423:24 \$50,000?

1423:25 A Yes.

1426:15 Q After looking at page 49 of Division

1426:16 Exhibit 59, does that refresh your recollection

1426:17 that you were indeed a Blue Ocean advisory client

1426:18 at the time that you purchased your Blue Ocean

1426:19 Portfolios royalty units?

1426:20 A Yes.

1426:21 Q Okay. Thank you. And Mr. Dixon, you

1426:22 funded the \$50,000 investment of the two royalty

1426:23 units you purchased with cash from your Blue

1426:24 Ocean-managed IRA, correct?

1426:25 A Yes.

1430:11 Q But Blue Ocean Portfolios was the

1430:12 investment advisor of the very IRA that you were

1430:13 going to use to fund -- to fund the purchases of

1430:14 your royalty units, right?

1430:15 A Yes

**James Winkelmann, Sr. and Blue Ocean Portfolios, LLC (AP File No. 3-17253)**

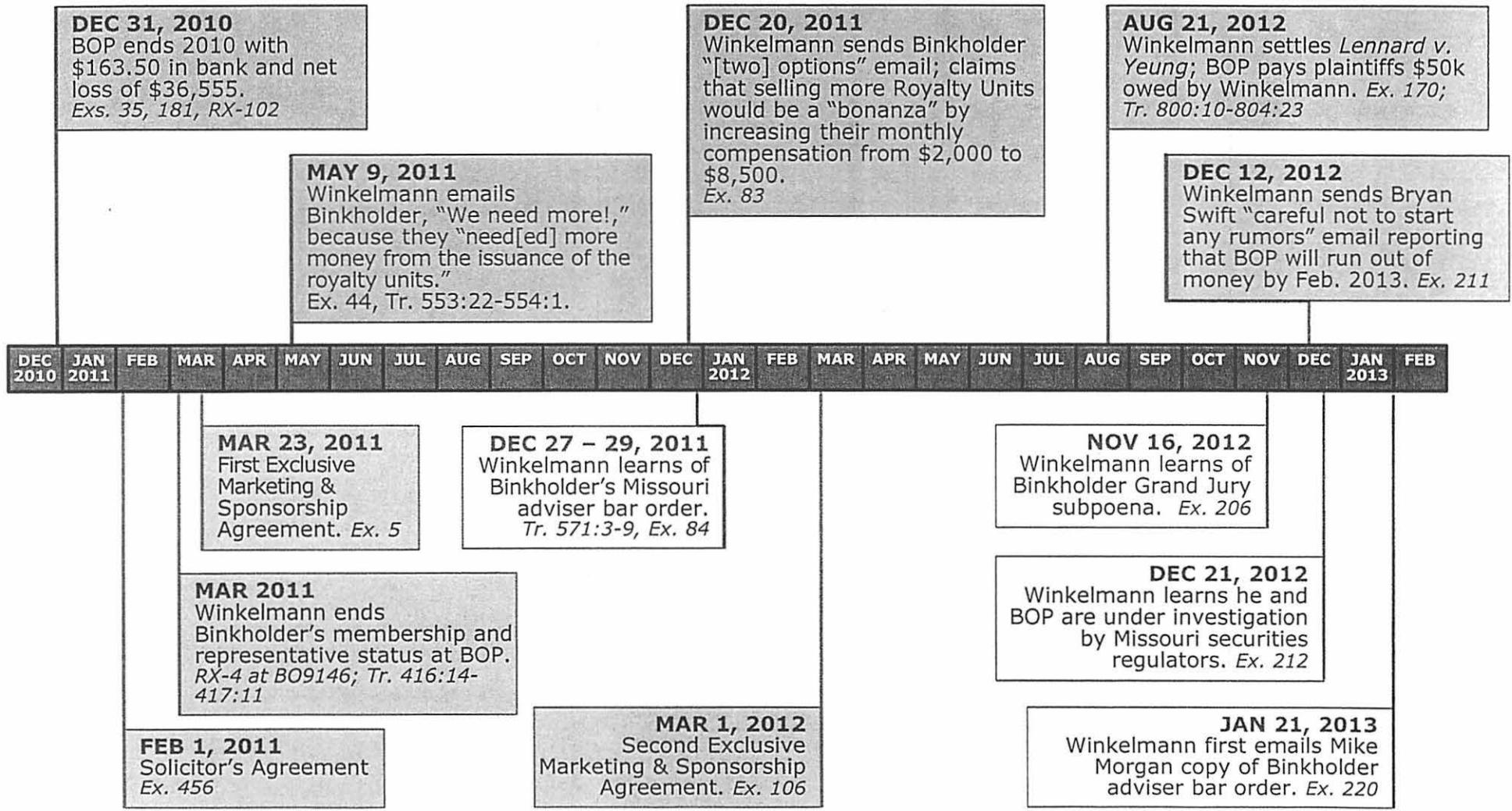
BOP Royalty Units offerings: *RX-001-004, EX. 455*

**Round 1** 3/31 - 7/13/2011

**Round 2** 3/10 - 5/22/2012

**Round 3** 9/1 - 10/15/2012

**Round 4** 2/15 - 2/25/2013



■ BOP agreements with Binkholder      ■ Missouri securities regulators and SEC actions      ■ BOP and Winkelmann Financial Concerns

**James Winkelmann, Sr. and Blue Ocean Portfolios, LLC (AP File No. 3-17253)**

**JUL 17, 2013**  
 Winkelmann emails Enterprise Bank to structure loan between Blue Ocean Portfolios and Blue Ocean ATM, LLC, noting that he proposed the loan structure since "moving money bank and forth . . . creates a bunch of regulatory scrutiny by the SEC." *Ex. 274*

MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY  
 2013 2014 2015 2016

**SEP 2, 2015**  
 BOP submits Wells submission. *Exs. 345-346*

**AUG 11, 2015**  
 SEC Enforcement provides Wells notice to Winkelmann and BOP. *Ex. 341*

**SEP 15, 2014**  
 SEC Enforcement issues document subpoena to BOP. *Ex. 309*

**FEB 27, 2015**  
 BOP files Form ADV and Brochure with SEC which indicate that it has custody of cash for "18 clients." *Exs. 331-332*

**JUN 3-5, 2013**  
 SEC OCIE conducts on-site examination of BOP. *Tr. 58:15-21*

**APR 7, 2014**  
 BOP responds to SEC OCIE's deficiency letter. *Ex. 298*

**MAR 13, 2013**  
 Winkelmann testifies before Missouri securities regulators. *Ex. 249*

**MAR 12, 2014**  
 SEC OCIE sends deficiency letter to BOP. *Ex. 293*

**FEB 4, 2015**  
 Winkelmann testifies before SEC Enforcement. *Ex. 327*

**MAY 19, 2016**  
 SEC Enforcement files OIP.

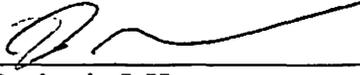
■ BOP agreements with Binkholder

■ Missouri securities regulators and SEC actions

■ BOP and Winkelmann Financial Concerns

Dated: November 22, 2016

Respectfully submitted:



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Benjamin J. Hanauer  
David F. Benson  
Division of Enforcement  
U.S. Securities and Exchange Commission  
175 West Jackson Blvd, Suite 900  
Chicago, IL 60604  
Phone: 312-353-8642  
Fax: 312-353-7398  
Email: [hanauerb@sec.gov](mailto:hanauerb@sec.gov)